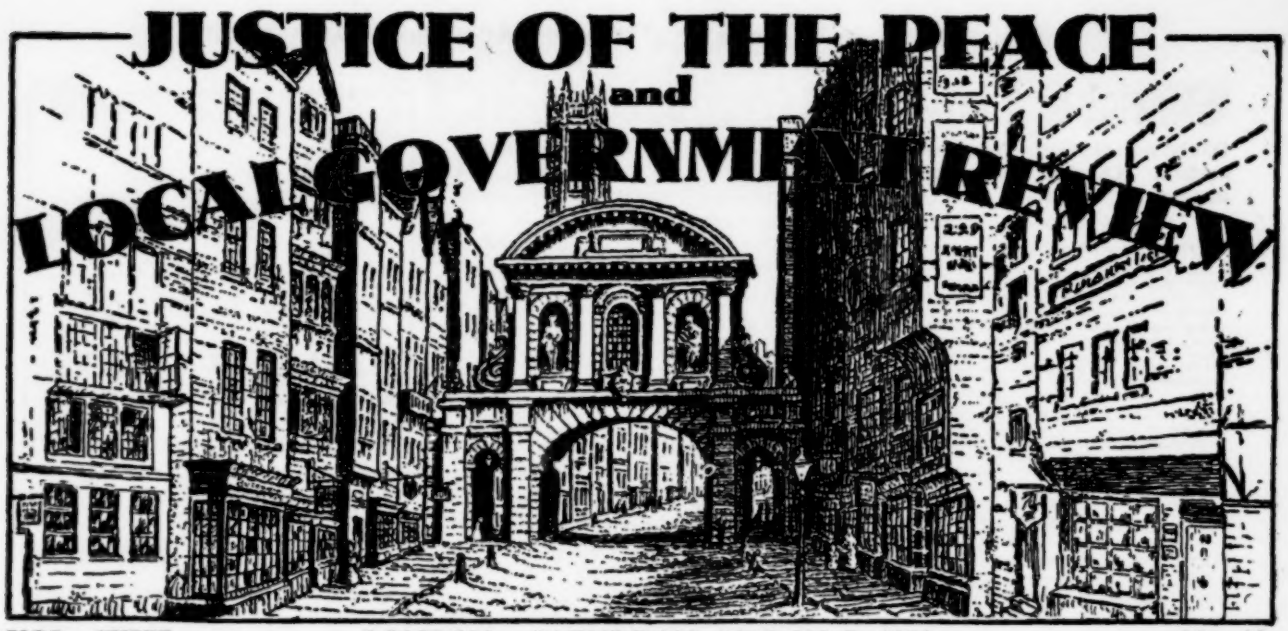

VOL. CXVII LONDON: SATURDAY, MARCH 7, 1953 No. 10

CONTENTS

REPORTS

Official & Classified Advertisements, etc.

Official Advertisements (Appointments, Tenders, etc.), 2s. per line and 3s. per displayed headline. Classified Advertisements, 24 words 6s. (each additional line 1s. 6d.) Box Number, 1s. extra *Latest time for receipt* 10 *a.m. Thursday*

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NOTIFICATION OF VACANCIES ORDER, 1952

The engagement of persons answering these advertisements must be made through a Local Office of the Ministry of Labour or a Scheduled Employment Agency if the applicant is a man aged 18-64 or a woman aged 18-59 inclusive unless he or she, or the employment, is excepted from the provisions of the Notification of Vacancies Order, 1952. *Note:* Barristers, Solicitors, Local Government Officers, who are engaged in a professional, administrative or executive capacity, Police Officers and Social Workers are excepted from the provisions of the Order.

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LARGE Industrial Concern requires Solicitor for its Legal Department. Age between twenty-four and thirty. Interesting post for the right applicant. Pension Scheme. Salary according to qualifications. Please write giving full particulars to Box B.28, Office of this Newspaper.

WANTED

URGENTLY REQUIRED back issue of this journal dated July 12, 1884. Advertiser anxious to secure copy for reference. Reply, stating price, to Box No. B.29, Office of this Newpaper.

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YORKSHIRE DETECTIVE BUREAU T. E. Hoyland. **Ex-Detective Sergeant.** Member of the B.D.A., F.B.D., Associated American Detective Agencies, and the World Secret Service Association. Confidential enquiries; Divorce, etc.; Over 600 agents in all parts of the World. Over twenty-five years C.I.D. and Private Detective Experience at your service. 1, Mayo Road, Bradford. Tel.: 26823 day or night.

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Appointment of Full-Time Woman Probation Officer

APPLICATIONS are invited for the above appointment. The appointment will be subject to the Probation Rules, 1949, 1950 and 1952, and the salary will be in accordance with such Rules and subject to superannuation deductions. The successful applicant will be required to undergo a medical examination.

Forms of application may be obtained from the undersigned and applications should be received by me not later than March 21, 1953.

NEVILLE MOON,
Clerk of the Probation Committee.

County Hall,
Hertford.
March 7, 1953.

UXBRIDGE URBAN DISTRICT COUNCIL

Assistant Solicitor

SALARY within A.P.T. Va—VII according to experience. Superannuation. Council may be able to assist with housing accommodation if necessary.

Applications to Clerk of the Council, Council Offices, 265, High Street, Uxbridge, not later than March 23, giving age and experience and names of two referees (not testimonials).

BOROUGH OF KING'S LYNN

Appointment of Town Clerk and Clerk of the Peace

APPLICATIONS are invited from Solicitors or Barristers having wide experience in local government law and administration for the appointment of Town Clerk at a commencing salary within the range of £1,150—£1,350 per annum, according to qualifications and experience, with four annual increments of £50.

The person appointed will be required to carry out all statutory and other duties devolving upon him. He may also be invited to accept the appointment of Clerk of the Peace for the Borough. An additional salary of £50 per annum will be paid in respect of this office.

The appointment will be subject to:

(*a*) The provisions of the Local Government Superannuation Act, 1937.

(*b*) A satisfactory medical examination.

(*c*) The conditions of service laid down by the Joint Negotiating Committee.

(*d*) Three months' notice in writing on either side.

Canvassing, directly or indirectly, will disqualify.

Candidates must disclose whether they are related to any member or senior officer of the Council.

If required, the Council will give all possible assistance towards the provision of housing accommodation for the person appointed.

Applications, giving particulars of age, qualifications, experience, previous and present appointments, with the names of three responsible persons as referees, endorsed "Town Clerk," to be delivered to the undersigned not later than March 25 next.

FRANK G. REEVES,
Town Clerk and Clerk of the Peace.

Town Hall,
King's Lynn.

Justice of the Peace
and
Local Government Review
[ESTABLISHED 1837.]

VOL. CXVII. No. 10 LONDON: SATURDAY, MARCH 7, 1953 Price 2s. 3d. (including Reports) Price 1s. 3d. (without Reports)

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NOTES of the WEEK

Reform of the House of Lords

Referring to our Note of the Week at p. 130, *ante*, a correspondent has pointed out that a curious anomaly arises as between the position of Peers of Scotland and Peers of Ireland.

Peers who hold Scottish Peerages created prior to the Act of Union, 1707, are entitled to vote at a special election held in Edinburgh at the time of each Parliamentary election, to elect sixteen of their number as representative Peers of Scotland to sit in the House of Lords. Those elected have a right to sit and vote in the House of Lords during the life of the current Parliament. Those not elected have no vote at a Parliamentary election and may not sit in either of the Houses of Parliament. It is true, however, that some of the Peers of Scotland are also Peers of Great Britain or the United Kingdom and sit as such in the House of Lords. The remainder, however, as our correspondent puts it " are classed with infants and lunatics " insomuch as they are not entitled to a Parliamentary vote and may not sit in either House. The reason the Peers of Scotland not elected and not holding a Peerage in Great Britain or the United Kingdom may not stand for election to the House of Commons is that since the election of Scottish Representative Peers takes place for each Parliament, in theory they may be elected at any time to sit in the House of Lords.

The position of Peers of Ireland was similar with one important exception, namely, that instead of being elected for the life of a Parliament, the election was for the life of the Peer. Those not elected therefore were, in theory at any rate, not liable to be elected at any moment to sit in the House of Lords and thus could stand for election to the House of Commons.

It would be interesting to know how this important difference as between the treatment of Peers of Scotland and Ireland arose. Since the creation of the Irish Free State in 1922, there have been no Irish elections and in consequence there are only five Representative Irish Peers remaining. But the unfairness to Scottish Peers still remains and is, we suggest, yet another matter that should be carefully considered when any reform of the House of Lords is under discussion.

Discretion in Case of Adultery

In High Court proceedings for divorce or judicial separation the filing of a discretion statement is not uncommon. Thus, a petitioner who has committed adultery asks the Court to grant relief in its discretion, notwithstanding the fact that he or she has been guilty of adultery. By r. 28 of the Matrimonial Causes Rules, 1950, it is provided that a discretion statement shall set forth particulars of the acts of adultery committed and of the facts which it is material for the court to know for the purpose of the exercise of its discretion. The discretion is said to be a regulated discretion, but still unfettered by any statutory provisions as to cases or classes of cases suitable for its exercise.

In matrimonial proceedings before magistrates' courts there are no discretion statements and magistrates cannot grant divorce. It has to be remembered, however, that an order made in a magistrates' court may be used as evidence in subsequent proceedings for divorce, which adds to the importance of the decision to make an order.

Magistrates do, in fact, have to exercise some such discretion when deciding to make an order in favour of a wife who has committed adultery. This is by virtue of the proviso to s. 6 of the Summary Jurisdiction Married Women Act, 1895. Under this proviso they may have to consider whether the wilful neglect or misconduct of the husband has conduced to the adultery of the wife. Similar considerations must often arise upon a discretion statement before the High Court.

The Marriage Tie

In the case of *Hinkins* v. *Hinkins* (*The Times*), February 19, important observations on the exercise of discretion in divorce cases were made in the Court of Appeal. The appellant had been refused a decree against his wife on the ground of desertion, the learned Commissioner having felt unable in all the circumstances to find anything to justify him in exercising discretion in favour of the husband, who had admitted adultery with two women. The husband had not informed his wife of the adultery, and the petition was in fact undefended.

The Court of Appeal dismissed the husband's appeal. Denning, L.J., said that the manner in which the Court exercised its discretion in favour of a petitioner who had committed adultery had gone full circle. Thirty years ago it was rarely exercised. Nowadays it was rarely refused. There was a great tendency for a petitioner to feel that he was entitled to discretion as of right. This lost sight of the function of the Court to have regard to the binding sanctity of marriage. In this case, as in others, a charge of desertion was put forward as a cloak to cover up the petitioner's adultery. It was quite clear that in this case, the wife would have had a straightforward case against the husband on the grounds of adultery.

In these days it is well that people should sometimes be reminded that adultery is a grave matrimonial offence, not lightly to be passed over. It is also necessary sometimes to emphasize the binding nature of marriage.

Re-opening Case After Conviction

It has often happened that a magistrates' court, after having proceeded to conviction and sentence, has become aware of facts which incline it to alter its decision. If all it does is to mitigate the sentence, then, providing the alteration takes place at the same sitting of the court, the decision is not likely to be called in question, although it is not possible to point to any statutory authority authorizing such a course. Where the court

wants to go much further and, believing that it ought not to have convicted wishes to re-open the case, that may be perfectly natural and commendable as a desire to prevent a possible miscarriage of justice, but it cannot be justified, as the case of *R.* v. *Campbell, Ex parte Hoy* (*The Times*, February 24) shows.

In this case a Metropolitan magistrate had sentenced a defendant in respect of a customs offence to which she had pleaded guilty after saying that she understood the charge. Later in the day a solicitor appeared and asked the learned magistrate to be allowed to change the defendants plea to one of not guilty. This was allowed and the defendant was remanded. Application was made to the Divisional Court to prohibit the magistrate from proceeding further with the matter otherwise than by issuing a warrant of commitment.

The Divisional Court had before it an affidavit from the magistrate explaining why she had granted the application to change the plea and stating that she was not entirely satisfied about the defendant's guilt.

The Court granted prohibition. In the course of his judgment the Lord Chief Justice said it might have been more satisfactory if some question had been put to the solicitor as to why his client desired to change her plea. He said that the Court were of opinion that once the magistrate had convicted this woman she was *functus officio* and had no power to allow the plea to be changed. There might be a certain amount of hardship arising in some cases as a result of this, but hard cases must not be allowed to make bad law. It was essential that the Court should not act out of any feeling of compassion, but it should apply the law and proceed on principle.

Many people may feel that there ought to be some provision in the law for dealing with the hard cases to which Lord Goddard referred. The difficulty, we feel convinced, would be to draw the line between cases that should be reheard and those that should not. There is generally some method of obtaining consideration of a hard case or what is believed to be a hard case. In *R.* v. *Campbell, supra*, the Lord Chief Justice pointed out that the defendant could, if she felt she had a grievance, apply for the prerogative of mercy to be exercised in her favour, or appeal to quarter sessions against sentence.

The more one reflects upon the implications of this case and the judgment of the court the more one is impressed by the need for courts to act upon firmly established principles.

Medical Evidence as to Drunkenness

The Irish Law Times and Solicitors Journal for January 31 reports a resident magistate, when dismissing a charge of driving a vehicle while under the influence of drink as saying : " The medical evidence in drunk-in-charge cases must be accepted." Four police witnesses had given evidence that they considered the defendant incapable of exercising proper control, but a doctor who examined him twenty-five minutes after his arrest said he was not incapable of proper control.

If the learned magistrate is correctly reported, and meant that the evidence of a doctor in this class of case must always be regarded as conclusive, his statement goes further than any pronouncement we have ever known to be made in an English court. Naturally, the evidence of a medical practitioner on such a question carries great weight and cannot easily be displaced except by other expert evidence. As was said by Humphreys, J., in *R.* v. *Nowell* [1948] 1 All E.R. 794 ; 112 J.P. 255, when dealing with a submission as to the admissibility of certain medical evidence, the evidence should be accepted as that of a professional man giving independent expert evidence with a desire to assist the court. That is one reason why it carries so much weight, but we should hesitate to say that it must always be binding upon the court. Experienced police officers are good judges of capacity or incapacity to drive and, save in exceptional cases of illness, of drunkenness. If a court is really impressed by a considerable body of other evidence, it is surely entitled to act upon it, even if a medical witness disagrees.

Drunkenness

Although drunkenness is not nearly so prevalent as it used to be forty or fifty years ago, it is unfortunately true that there is evidence to be derived from various reports that there is a tendency for it to increase. We have been reading the report of the Chief Constable of Rochdale to the general annual licensing meeting. After giving some figures, he says :

" Although the total of ninety-one convictions is slightly less than ninety-three in the previous year, it is still much higher than in any other post-war year. From what other police forces have reported this is likely to be a general tendency, although there may well be certain exceptions.

" Forty-eight cases of drunkenness were of the ' incapable ' variety and the remaining forty-three instances were accompanied by disorder.

" The figures given above do not illustrate the total misery caused by drunkenness. They do not show, for example, the domestic upheavals, nor the unreasonableness or aggressiveness caused by too much drink. The figures, therefore, should be construed with those of refusing to quit (eleven prosecutions as against two the previous year), unlawful wounding (forty-two complaints—an increase of eight) and threatening behaviour in the streets (thirty-four prosecutions—an increase of seven). On one occasion the owners of a certain house were seen with regard to the frequency of disorders outside their premises, and were informed that the justices took a very grave view of the fact that the evidence revealed that the persons concerned in almost every instance had been drinking in their house. It is gratifying to report that as a result of the combined action taken a considerable improvement was effected in this vicinity. It is also a fact that one of the most frequent excuses given by criminals is that they acted as they did ' when they were drunk,' so that the harm done by excessive drinking cannot be adequately conveyed by statistics, however detailed."

Mr. Harvey's reference to cases of refusing to quit licensed premises is underlined by another paragraph in his report, in which, after referring to his policy of affording protection to the licensee against unruly and disorderly behaviour, he relates an " outrageous case of assault on a licensee." The licensee received serious injuries from a customer when insisting that he should leave at closing time. The customer was fined £25 and ordered to pay £13 costs.

Compensation for Negligence

In the *Modern Law Review* for January, 1953, there are as usual several interesting essays. Among these, we are inclined to give the prize to a paper entitled " The Shock Cases and Area of Risk " by Professor Goodhart. At first sight it may be thought that it does not directly affect our own readers, but, after all, local authorities are among the large owners of motor vehicles and must, like other motor owners, find themselves at times in the unhappy position of killing a pedestrian and causing shock to witnesses. Professor Goodhart's paper deals with a problem which has many times been before the Courts, and came before the Court of Appeal in the middle of February, in *King and Another* v. *Phillips*, *The Times*, February 16, 1953. In that case McNair, J., had given judgment partly against and partly in favour of a cab proprietor whose cab had injured

the infant plaintiff—that is to say, the infant plaintiff succeeded, but his mother, who claimed for damages for shock sustained through witnessing the accident to her child, was held to have no good cause of action. Shortly stated, the facts were that Mrs. King was at an upstairs window of her home, when she heard a scream from the end of the road, which she recognized as being in her child's voice. She saw a cab backing onto the child's tricycle, and that the tricycle went under the cab. The learned Judge held that she had suffered nervous shock, arising directly out of the accident, and said that he would have awarded her £100 damages if he had found the defendant liable to her. "He held, however, (we quote *The Times*), that it was contrary to common sense that a cab driver ought reasonably to have contemplated that if he backed his cab negligently he might cause injury by shock or any other injury to a woman in a house some seventy to eighty yards away up a side street. He held accordingly that the driver was not liable to the mother for breach of the duty to take care." This judgment was upheld unanimously by the Court of Appeal. The principle underlying it is that which Professor Goodhart sets out to examine, in the paper before mentioned, in which he discusses (among other things) the judgment of McNair, J., in *King* v. *Phillips*, *supra*, in the Court below. He is critical of the line of cases which culminated in the decision of the House of Lords, in *Hay or Bourhill* v. *Young* [1942] 2 All E.R. 396, and examines the speeches delivered in the House in that case with some particularity. He seems doubtful whether McNair, J., was bound (as he and the Court of Appeal thought that he was bound) by *Hay or Bourhill* v. *Young*, *supra*, when deciding *King* v. *Phillips*, *supra*. We are inclined to think that in this group of cases there has been confusion between different conceptions of the basis of the defendant's liability. Much is said, in *Hay or Bourhill* v. *Young* and in *King* v. *Phillips*, of that which the defendant might reasonably be supposed to have foreseen as the consequence of his act of negligence. English law, in short, does not seem to have made up its mind whether the purpose of an action for negligence is to compensate the plaintiff or to punish the defendant. In daily practice, no doubt, both conceptions enter in. In so far, however, as an action for negligence (or for the matter of that any action in tort) is compensatory, it may be questioned how far it is right to excuse the defendant from compensating the plaintiff, on the ground that the mischief which has admittedly occurred was beyond the reasonable field of the defendant's foresight. Where there has been no negligence there can, obviously, be no compensation awarded in an action based on negligence—although there may be good public grounds for compensating the person injured in some other way, as under modern legislation of the type of the Workmen's Compensation Acts and (now) the National Insurance (Industrial Injuries) Act, 1946. But once admit that the defendant has been negligent, and that the plaintiff has thereby suffered detriment for which he ought on merits to be compensated from some source, it seems doubtful whether it is right for the plaintiff to lose his compensation, because paying compensation would punish the defendant unreasonably. It is at any rate possible to argue that, in such a case, the defendant is negligent at his peril, and ought to make good the consequences which have in fact occurred. It seems, however, since *Hay or Bourhill* v. *Young*, as interpreted and applied in the Court of Appeal in *King* v. *Phillips*, that this result, if it be desirable, can now not be brought about except by legislation.

Repeal Sections in Acts

A paper of a technical character, which may at any time affect the lawyer, is contributed to the *Modern Law Review* for January by Mr. Donald Murray, formerly assistant parliamentary draftsman to the Parliament of Northern Ireland, and now a lecturer in law at the University of Belfast. Under the intriguing title "When is a Repeal not a Repeal?", he discusses the difference between the repeal clause in a Bill, with the now normal accompaniment of a schedule of repealed provisions, and a clause saying that such and such enactments, either set out in the clause or detailed in a schedule, are to cease to have effect. Many of the more voluminous modern Acts of Parliament contain a provision more or less in this sense, as well as the direct repeal clause; many students have wondered why this duality was necessary. Mr. Donald Murray's paper will help them to understand the reason, for what is now a fairly familiar piece of technique on the draftsman's part. It also explains a distinction which the Courts may sometimes find to exist, between purely consequential repeals, and others where there is no provision for substituted enactments to have effect. We are not so sure as Mr. Murray, that the High Court would at the present day refuse to give effect to a plain repeal, not accompanied by a provision that enactments were to cease to have effect, even in the case (which is where he thinks they might do so) in which the plain repeal is not consequential upon anything else in the Bill. Upon this one can only wait and see. Meantime, Mr. Murray certainly makes out a good case for inserting (in any Bill which is so drawn as to repeal, or to repeal and re-enact, earlier statutory provisions) an express declaration of those which are to cease to have effect. As we have said recently in other contexts, the duty of the courts in interpreting a statute is to find out, if possible, what Parliament intended, and it is the draftsman's main business to make sure, if he can, that Parliament's intention is not left in doubt. This may be particularly important in such a matter as repeals, because the existence side by side of new and old provisions might expose persons affected by the Act to a dual peril, and conceivably to obligations which on the face of them were inconsistent.

Lump Sum Subsidies

The Kidderminster rural district councillor who urged at a council meeting that the Government should make a free gift to persons buying houses was possibly surprised that his suggestion was widely published in the London newspapers, as an original contribution to the housing problem. Headed "A plan for Macmillan" it was treated in Fleet Street as a bright new notion, it being overlooked that the plan was anything but new. The fact that it has been presented to this and other governments before; it was indeed embodied in the Housing, &c., Act, 1923, and in force for several years. Its abrogation is, however, no reason why it should not be brought forward and discussed again. The Kidderminster suggestion was that a grant of £200 should be made from national funds. A member of Parliament in a week-end speech promptly capped this by suggesting £300. Taking the ordinary calculation, that the money left on mortgage where a house is bought with the help of the Small Dwellings Acquisition Acts or the Housing Act, 1949, or through a building society without any advance from public funds, will not cover the whole price, it is evident that the finding of the balance, however small a proportion this may be, is for some purchasers a serious problem. Various devices have been adopted for enabling them to bridge the gap. If public funds were made available for doing so, in the form of a free gift, conditioned only upon the recipient's entering into a proper contract for borrowing the remainder of the price, this, for the Treasury, could be an economical method for stimulating house ownership. The arithmetic is complicated, depending on the inter-relation of subsidy schemes and other factors—it may be asking too much for this or any Government to promote legislation in this sense. The Treasury mind moves naturally towards lending money in preference to giving it. The idea is, for all that, one which deserves more consideration than has been shown publicly to be given it of recent years.

CAN I GET AWAY WITH IT?

By presenting to the public a restatement of the " Baccarat Case " or " Tranby Croft Scandal " of sixty years ago, the B.B.C. did more than provide an hour's entertainment for a generation which hardly knows that case by name. It presented them, perhaps unknowingly, with a possible explanation of a problem possessing live interest at the present day. For those who do not remember this scandal of last century (and few among our readers can remember it, unless it be as something which their elders talked about when they were children), it may be hard to realize the excitement that it caused. Its presentation as a broadcast by Mr. Edgar Lustgarten had some faults of emphasis and taste—due, it may be, to the passing of the older generation. In his introduction he seemed over anxious to show that he was not impressed by the social standing of the house party at Tranby Croft ; his tone suggested that the fellow guests of the Prince of Wales were titled nobodies, and he went out of his way to belittle the anxiety of members of the house party to protect the Prince of Wales from scandal. After all, there was no law against playing baccarat among friends in a private house, so why should anybody worry (said he in effect) if the public did learn that the game had been played when the Prince was present ? This is to ignore the atmosphere of the late Victorian epoch—an atmosphere which turned into a storm when the story did, in the end, leak out. Mr. Teignmouth Shore's introduction to the case in the *Notable Trials* series gives a selection of extracts from the press, headed by *The Times*, whose sanctimonious attitude might turn the twentieth century stomach—though it behoves us not to be, as a generation, too self-righteous about the newspaper treatment of some topics of the present day. In the early nineties, there was tremendous force still remaining from old-fashioned puritanism, especially in the midlands and the north, and the Prince of Wales was subject to constant adverse comment, largely ill-informed, about his habits and his private life. It was natural and proper, therefore, that those who were his friends should be prepared to go to great lengths to avoid anything which could be regarded as a scandal near his person.

This was evidently the motive of Lord Coventry and General Williams, in attempting to hush the matter up ; it was obviously the motive which actuated Sir William Gordon Cumming also, when he was faced with their accusation, and acquiesced in a course of conduct which Mr. Lustgarten finds inexplicably foolish. It will be remembered that Sir William was a wealthy baronet, colonel of the Scots Guards, and one of the inner circle round the Prince. It must have seemed incredible that he should risk his position in the world by cheating at cards. Though the stakes were on the high side by the standards of less wealthy persons, they were reasonably low for the persons who were playing. (Indeed, the Prince explained to Archbishop Benson, who left a record of the conversation which Mr. E. F. Benson published, that he had lent a set of counters of his own, because he disapproved of high play, and his counters ran from 5*s*. only up to £10). But even had the stakes been extravagant, no amount of money which Sir William could win, it has always been argued, could have compensated him for what he stood to lose. Nevertheless, there was evidence from five persons in the house party, all of whom had every reason for upholding the previous general opinion of Sir William's honesty, that night after night they had been watching the play, and that he had in fact been cheating in an elementary fashion. His undertaking to withdraw from the house party, and thenceforward to give up playing cards entirely, was given under pressure from Lord Coventry and General Williams and without realization, as it seems, either on his part or on theirs, that so great a change in his mode of life was bound to lead to comment and gossip, and sooner or later to disclosure of the facts. And so it proved. Before long talk was rife throughout society, and Sir William had no option but to take legal proceedings to defend his reputation. It was his cross-examination by Charles Russell, in the course of those proceedings, that destroyed his reputation finally. That cross-examination was described in Mr. Lustgarten's broadcast as " diabolical " ; in point of fact when read as a whole in *Notable Trials*, and even as given in Mr. Lustgarten's extract, it is seen to be diabolical only in the sense of being extraordinarily penetrating and destructive. It is not possible to say that it was unfair, since the whole point of the proceedings was that the plaintiff had come into court and himself put his character in issue before the jury. Sir Edward Clarke, who led for the plaintiff, left it on record that he believed the verdict for the defence was wrong, and so did many other people. It was a question whether to believe the superficially incredible, when vouched for by five honest and initially not unfriendly witnesses, convinced that they had seen what they did not want to see. Mr. Lustgarten's final comment in the broadcast was that no one will ever know the truth. The inference, as we have said, which has been drawn (possibly) by most people and is drawn by Mr. Teignmouth Shore, is that Sir William had so little to gain and so much to lose that it is scarcely possible that he would have cheated. We have said, however, that the problem may have an interest in some modern contexts. In many cases of juvenile delinquency it is difficult for the adult to understand what was the juvenile's motive : take, for example, the case of the Scottish lad of which we have spoken before who took a large boat and sailed away towards Norway. Since he could not have hoped either to sell it or to hide it for his own pleasure, common thievery cannot have been his motive. Was it pure destructiveness, like the conduct of men who threw a fire engine into a static water tank ? If he scuttled the boat in Norwegian waters he could hardly have escaped detection. Was it childish mischief ? If not, we wonder whether the answer can be found in an unexpected quarter : namely, the story of James Pethel, one of Max Beerbohm's *Seven Men*. Pethel is depicted as a wealthy acquaintance of the author, travelling about Europe with his wife and daughter. He is a heavy gambler at Monte Carlo and elsewhere, but invariably lucky ; he confides to the author that from high gambling he obtains no thrills. For the sake of greater thrills, he risks his whole fortune in a dubious financial enterprise, but his luck holds, and he comes out a richer man. He takes to motoring, accompanied by his wife and daughter—to the latter of whom he is devoted—and deliberately exposes their lives and his own by dangerous driving. He goes on to flying with her in his private aeroplane. In all the risks he takes, he bears a charmed life, until eventually even the thrill of risking the lives of his wife and daughter palls upon him. When he suddenly fell dead in the street, after one of these dangerous adventures, it was discovered that he had (and knew he had) a form of heart disease likely to prove fatal under any stress. May there not be a parallel between the wealthy (and imaginary) Pethel and the wealthy (and historical) Sir William Gordon Cumming ? Each had in life, in a worldly sense, everything that a man could wish, but for this very reason no ordinary gambling could bring to either man the thrill which the small punter gets from risking a few shillings on the turf. What other excitement had Sir William than setting at stake his reputation, his position in society, and everything which to outward seeming made his life worth living ? If we are right in suspecting that the jury reached a true verdict, and that

the explanation of his otherwise inexplicable behaviour lay where we are suggesting, it may be that the story has a day to day practical application, for those who are concerned with a good deal of the superficially motiveless crime of the present day. Our young people have been deprived, by progress, of most of the *stimuli* which beset their grandparents. For various reasons they will not seek adventure overseas, and life at home is easy, flat, and unexciting.

CARRYING WEAPONS

The Prevention of Crime Bill, 1953, presented by the Home Secretary, the Secretary of State for Scotland, and the Attorney-General, issued from the printing press simultaneously with our issue of February 14, in which we had made some anticipatory remarks at pp. 100 and 121. As would be expected, it is better expressed than the Toy Weapons Bill (Bill 24) introduced by Mr. Viant and ordered to be printed on November 19, 1952, upon which we commented at p. 99. As we foresaw, it has been widely welcomed, although there have been some misapprehensions about its effect, and (inevitably) there are problems to be faced upon it such as those of which we spoke in our earlier article. Before the Second Reading debate on February 26, the newspapers had generally fixed, naturally enough, upon the power in cl. 1 (2) for a constable to arrest without warrant any person whom he has reason to believe to be committing an offence under subs. (1) of the clause. This power arises if the constable is not satisfied as to that person's identity or place of residence, or has reason to believe that it is necessary to arrest him in order to prevent the commission of any other offence.

The offence under subs. (1) referred to above is for a person, without lawful authority or excuse the proof whereof shall lie on him, to have with him in any public place any offensive weapon. " Public place " is defined to include any highway and any other premises or place to which at the material time the public have or are permitted to have access, whether on payment or otherwise. The phrase " offensive weapon " is defined to mean any article made or adapted for use for causing injury to the person, or intended by the person having it with him for such use by him. The sort of misapprehension to which we referred above has apparently arisen from a misreading of these words about " intention," in association with the words in cl. 1 (1), " the proof whereof shall lie on him." It has been thought that the person arrested had to prove the innocence of his intentions, but this is not what the clause proposes. It is, accordingly, worth taking some trouble to analyse these provisions. Let us recall the type of objects mentioned in our earlier article. The policeman's truncheon, which a former special constable has been allowed to keep as a souvenir, is clearly an article made for use for causing injury to the person. So is a sword-stick ; so is an ordinary knobbed walking stick, when somebody has stuck it about with razor blades. If a person has with him in a public place any object of this sort, no need exists (under the clause) to take his " intention " into account; he can be called upon, without more, to prove some lawful authority or excuse for having it with him. As an element in proving this, he can say that he had no intention to cause injury to anybody—he was, for example, carrying his great-grand-father's rapier with him through the streets, with the intention of presenting it to a museum. On the other hand, where a person has with him an object *prima facie* innocent like a hammer or a cycle chain, or the domestic chopper mentioned in debate, his intention to cause injury must be proved, before any question arises of his having to prove lawful authority or excuse.

Lawful authority, we suppose, when it has to be proved under cl. 1 (1), can come only from some public source ; " excuse " is much more difficult. The Home Secretary said that the night watchman on his employer's premises, who has a truncheon or a life preserver, would be outside the Bill, but this is because he is not in a " public place." We have instanced the ex-special constable who takes his souvenir truncheon with him on a lonely walk ; his intention to cause injury would not be difficult to infer if it had to be inferred, though his " excuse " would generally be considered adequate—but no question of " intention " arises in such a case, unless he introduces intention (or rather its absence) himself as an element in his " excuse." We suppose that it would be easier to establish a lawful excuse (*i.e.*, in the case where intention to cause injury does not have to be proved) if the article was one made for use for causing injury since such articles are obtainable ready made, than it would where it was " adapted " for use for causing injury—to fit razor blades or five inch nails into the head of a stout stick does imply an intention, and suggests a purposefulness, beyond the scope of the ordinary lawful excuse, while the mere carrying in a public place of an object manufactured as a weapon in a factory can be quite innocent.

More difficulty, we think, arises over the part of the definition that brings under the head of " offensive weapon " an article which (was not originally made or afterwards adapted for causing injury but) is intended by the person having it with him for use by him for causing injury to the person, especially where it is not, in its own nature, a weapon at all. The lonely walker or cyclist above mentioned who takes with him a length of gas pipe or a hammer, and is arrested without warrant, may admit that he intended to cause injury to persons who attacked him, and yet establish the lawful excuse that he was going (perhaps was obliged to go in the course of his employment) into places where no police protection was available. Much will depend on facts, and upon the reasonableness of magistrates, if cases of this sort come before them. We think the Attorney-General was not at his best in that part of his speech where he said that, just as the police are unarmed, so private persons in this country ought not to carry weapons (made, " adapted," or " intended ") for their own protection, but to rely on society to protect them. Thousands of people are constantly obliged to be about in lonely places, where society can do nothing for them (until after the event, when it may be able to catch and punish an attacker) ; moreover, the policeman, unarmed though he is, is a man in the prime of life and good physical condition, trained to protect himself. There is much more reason for long distance lorry drivers, commercial travellers away from towns, or even pleasure motorists or country walkers, to carry something that can fortify their capacity for self-defence, just as there was for the woman mentioned by Mr. Hyde, M.P., who carried a knitting needle when she crossed a common—and used it with effect. Unquestionably it was a " offensive weapon " within the definition, as would be the hatpin of which there have been several examples, used in self-defence by women. This same Mr. Hyde, by the way, was guilty of a strange lapse for a member of the Bar, in saying that the Bill ought to extend to women culprits as well as to men. Of course it does so, by virtue of the Interpretation Act, 1889, and so it should. The " gun girl " of the United States already has her parallel, for girls have been found attached to razor gangs, carrying the razors in their bags or about their persons. It will not be surprising if one effect,

when the Bill passes into law, is to increase the number of women carrying offensive weapons as defined, since practical causes make it harder for the police to arrest the woman accomplice on suspicion, than to arrest the man whose weapon she is hiding till he needs it.

On the whole, however, we foresee fewer doubtful cases under subs. (1) of the operative section, read with the definition in subs. (3), than under subs. (2). The reference to arrest where the constable is not satisfied as to a person's place of residence is probably an echo of *Christie* v. *Leachinsky* [1947] 1 All E.R. 567; 111 J.P. 224, where the constable knew the place of residence or at least the established business premises of the person he arrested, and much turned upon the question whether in these circumstances the arrest was justified. On the other part of this particular enactment (the cases where the constable is not satisfied as to the identity of the arrested person), things would have been much easier if the wartime provision for identity cards had been retained and given statutory force. It may often be found that persons who are in reality respectable do not have about them any conclusive evidence of their identity; note that, even if the constable is satisfied of one of the two things—identity and place of residence—he may still arrest without warrant if he is not satisfied of both. Moreover, even though he is satisfied both of the identity and of the place of residence of the person he arrests, the arrest is still authorized by the subsection if he has reason to believe that it is necessary in order to prevent the commission of any other offence. Surprisingly, perhaps, there was less said in the Second Reading debate about the power of arrest than had been said in the newspapers beforehand, although it is (to our mind) more important than the point about the subsequent burden of proof, of which so much was made. We do not like powers of arrest by a constable without a warrant, but we are ready to concede that this new one is less open to objection than those which have survived from early times in the Metropolitan Police Act, 1839, and a few parallel local Acts in provincial towns. As the Home Secretary pointed out in the debate, the Bill does not propose to give a power of search upon the spot. This will not make much difference, since a suspected man or woman can be arrested, and can be searched at the police station; we should like to think that absence of an express power of search was in the nature of a forecast, that the Government meant to look into s. 66 of the Metropolitan Police Act, 1839, and similar enactments, but we suppose this is too much to hope for in face of the vested interest in those enactments which has grown up in course of a hundred years—even though the power of immediate search in the local Act section, contrasted with its absence in the new Bill, underlines the tendency of which we spoke at p. 133, *ante*, for Parliament to enact more drastic provisions for protecting property than for protecting persons from violence.

The Bill is an attempt to cope with a mischief which at present is much upon the public mind. On the whole it is, no doubt, still the general opinion that the police should not be armed except with truncheons, while the use by a policeman of his truncheon is always criticized in court, and treated as something which requires exceptional justification. One way to deal with the menace, such as it is, of the armed criminal would be to arm the police or selected mobile squads; despite the above quoted remarks by the Home Secretary and the Attorney-General, expressing the official or police view, we have seen indications that thoughtful and unsensational opinion is less hostile than it was before the war to the notion of giving this measure of protection to the public. If such a change of opinion were once permitted to have legal affect, there would be less necessity for imposing restrictions upon private persons: restrictions which in the nature of things will press more hardly on the honest man than on the criminal—for, be it remembered, the criminal will be more skilled at concealing his weapon (or devising weapons that look innocent, like cycle chains and gas pipes) than the honest man will be, when the latter finds good cause for taking with him on his lawful occasions some object made originally for the purpose of inflicting injury. Opinion is, however, not yet ripe for armed police, or attuned to the idea of self defence by those capable of self defence. Public opinion and public demand for action being what they are, the Bill now before Parliament strikes us as being about right.

ADDITIONS TO COMMISSIONS

SURREY COUNTY

Mrs. Wendy Blyth Addison, Moor Farm, Frimley Green.
Mrs. Williamina Mitchell Johnson, 93, Brockhenhurst Avenue, Worcester Park.
George Frederick Kiddell, 92, Ashridge Way, Morden.
George Charles Adrian Mann, 116, Stoneleigh Park Road, Ewell.
Harold John Poupart, Weylands, Molesey Road, Walton-on-Thames.
Arthur George Skeet, Tilloy, Oriental Road, Woking.
John Lewis Smallcorn, 76, Ruskin Road, Carshalton.
Mrs. Miriam Jeffries Tinniswood, Lone Oak, Coombe Lane, Kingston-on-Thames.
Major Herbert James Wells, M.C., 17, Oakhurst Rise, Carshalton Beeches.
Wilfrid Douglas Vernon, Anningsley Park, Ottershaw, Surrey.

YORKS (NORTH RIDING) COUNTY

Mrs. Agnes Joyce Balfour, Mayford House, Northallerton.
John Stanley Cartridge, 9, Guisborough Road, Whitby.
Lieut.-Col. Montagu Charles Warcop Peter Consett, T.D., Brawith Hall, Thirsk.
John Trafford Cook, 31, Gladstone Street, Eston.
Mrs. Edna Garvey, 461, Scalby Road, Newby, Scarborough.
Sir Richard Bellingham Graham, Bart., O.B.E., Norton Conyers, Ripon.
Robert Victor Hindmarsh, Royal Hotel, Whitby.
George Anthony Geoffrey Howard, Castle Howard, York.
Brig. Herbert Alexander MacPherson, Stockton Grange, York.
Lieut.-Col. Frank Eric Massey, M.C., The Elms, West Ayton, Scarborough.
Mrs. Edith Ellen Race, Flat 1, Scalby Hall, Scalby, Scarborough.
Major-General Alfred Eryk Robinson, C.B., D.S.O., Derwent House, West Ayton, Scarborough.
John Robert Robinson, The Croft, Flaxton, York.
Frank Shepherd, 62, Acklam Terrace, Thornaby-on-Tees.
Mrs. Isabella Mary Speir, East Hall, Middleton Tyas.
John Leslie Swain, 1, Friarage Avenue, Northallerton.
Charles Henry Swann, Glenisla, Yarm-on-Tees.
Richard William Waldie, 14 King Street, Richmond, Yorks.
Noel Lutpon Whitworth, The Leases, Leeming Bar, Northallerton.
William Wood, Lilling Hall, Sheriff Hutton, York.
Mrs. Beatrice Vera Wormald, 22, Brompton Road, Northallerton.

The man who's as cute as a fox
Is a perfect ass in the box.

J.P.C.

Is there something peculiarly wicked
About buying a sweep-stake ticket,
Something that calls for entirely different rules
To those in respect of Football Pools?

J.P.C.

PUBLIC LOCAL INQUIRIES

[CONTRIBUTED]

In May of last year the Law Society and the Royal Institution of Chartered Surveyors presented a memorandum to the Lord Chancellor and the Minister of Housing and Local Government on public inquiries affecting the acquisition or use of land. Whilst the memorandum passed almost unnoticed at the time, its publication affords an opportunity for considering the legal and constitutional position of such inquiries. An order made by a local authority and confirmed by a Minister after a public local inquiry into objections has become an increasingly common (if not popular) method of administrative action affecting the property and rights of private individuals and has, very largely, superseded the former nineteenth century judicial process by which similar results were achieved.

Observing that public local inquiries vary in the extent to which they resumble a judicial proceeding, the Societies adopt the conventional private law approach to the subject. Such an approach, as Dr. Robson has pointed out, results in questions of the highest social import being tried as if they were private controversies between John Doe and Richard Roe, and has incurred judicial disfavour. In *Local Government Board* v. *Arlidge* (1915) 79 J.P. 97 which, with *Board of Education* v. *Rice* (1911) 75 J.P. 393, may be taken as the first of the many cases bearing on this aspect of administrative law, the House of Lords discounted the analogy of judicial methods and procedure being applied to departmental action, whilst some thirty years later in *Johnson & Co.* v. *Minister of Health* [1947] 2 All E.R. 395 ; 111 J.P. 508, Lord Greene, M.R., warned against the attempt to force the curious procedure (confirmation by the Minister after a public local inquiry of a compulsory purchase order made by a local authority) with its curious obligations into the straight jacket of the formulae of ordinary litigation. A different approach is the political, illustrated during a debate in the House of Commons in 1951, on the acquisition of owner-occupied houses by the Parliamentary Secretary to the Ministry of Local Government and Planning (Mr. Lindgren) who said " a public inquiry is usually demanded in accordance with the intentions of Parliament, and local authorities or a government department will think twice when they want to acquire a property if they know that they will have to justify it before a local inquiry. They will ask themselves " Is it really necessary that we should have it ? Are we satisfied that we will be able to justify it at a local inquiry and show that it is necessary for the public good ? "

CLASSIFICATION OF INQUIRIES

Public local inquiries, which on modern thought are to inform or better inform the Minister's mind, may conveniently be classified as follows :

(1) Those held in connexion with the Minister's appellate jurisdiction such as an appeal against a decision of the local planning authority (Town and Country Planning Act, 1947, s. 16). This constitutes administrative adjudication proper, in that the Minister has to determine judicially or quasi-judicially, on appeal and in the light of his administrative duties as the central government department responsible to Parliament for the administration of planning, an issue between the appellant and the local planning authority. In the absence of an appeal the matter would be concluded by the decision of the local planning authority (which is a judicial and not merely executive decision—*see R.* v. *Hendon R.D.C., Ex parte Chorley* (1933) 97 J.P. 210). In this sort of case the Minister's quasi-judicial function is most marked, but the observations of Scott, L.J., in *Horn* v. *Minister of Health* [1936] 2 All E.R. 1299 ; 100 J.P. 463, should be borne in mind. He said : " where public departments are given quasi-judicial duties to perform as well as administrative duties the obligation to carry out their quasi-judicial duties in strict accordance with natural justice must always be considered in the light of their administrative duties." The Minister's " hybrid functions " may be shortly expressed as being quasi-judicial with the superimposition of the administrative. In practice on planning appeals the Minister gives reasons for his decisions (albeit in the expression " to protect the amenities of the district ") and by the periodic issue of Bulletins of Selected Appeal Decisions explains new principles or questions of policy. While the Minister is not an independent tribunal it may be noted that s. 16 of the Town and Country Planning Act, 1947, contemplates the possibility of planning appeals going to an independent tribunal instead of to the Minister, and be recalled that the Housing Act, 1930, transferred the right of appeal in respect of individual unfit houses from the Minister to the County Court.

(2) Those held in connexion with objections into clearance or compulsory purchase orders made by local authorities where, unlike the decision of a local planning authority, the original order has no legal effect until confirmed by the Minister. At such inquiries there is a presentation and examination of the views and supporting evidence of the local authority and the objector, after which the Minister considers the report of the inquiry and announces an administrative decision which he reaches " guided by his view of the policy which in the circumstances he ought to pursue." Here the functions of the Minister (as explained in *Johnson's* case) are administrative, with a superimposed quasi-judicial function in regard to the inquiry and consideration of the objection, and represent the converse of the previous type. Normally the Minister gives no reasons for his decision in such cases, nor, seeing that his decision is based on grounds of public policy, can he be expected to give a reasoned explanation. It might be more satisfactory if, in this type of case, the Minister were to communicate his decision direct to the objector and the local authority with a frank indication that he had reached his decision in the interests of the particular public policy for which he was responsible instead of leaving both, and particularly the objector at second hand, to assume that this was so.

(3) Those where the Minister's functions are purely administrative and where no judical or quasi-judicial duty is imposed upon him, *e.g.*, an inquiry upon objections to a draft order made by the Minister himself such as a New Town designation order : *Franklin* v. *Minister of Town and Country Planning* [1947] 2 All E.R. 289 ; 111 J.P. 118. In such cases, contrary to the position in the previous categories, there is no presentation of the views and evidence of two sides but merely the presentation of the views and evidence of the objectors. It is not, in this extreme type of case the duty of the Minister to call evidence before the inquiry, but the duty of the objectors to state their objections and call such evidence as they may be advised (*Re London-Portsmouth Trunk Road* [1939] 2 All E.R. 464), and the purpose (according to Lord Thankerton in the *Stevenage* case) of inviting objections and of having an inquiry is for the further information of the Minister in order to give final consideration to the soundness of his scheme.

ARLIDGE (1915) TO JOHNSON (1947)

The assimilation of the procedure involving public local inquiries to the judicial process (which it is suggested is now

outdated) has imported the conception of a *lis*, the inception of which was said to be reached when objections were made. A brief review of the development and abandonment of this conception which for many years was regarded as convenient, but which in 1947 was described by the Master of the Rolls in *Johnson's* case as dangerous, may not, therefore, be out of place. It was not established in *Arlidge's* case whether the appeal to the Local Government Board was to be regarded as a *lis inter partes* or as a decision on review of the administrative act of the local authority. Later in the pre-war clearance order cases of *Errington* v. *Minister of Health* (1935) 99 J.P. 15 and *Marriott* v. *Minister of Health* (1935) 100 J.P. 41, Swift, J., expressed the view that the Minister was not a judge trying a *lis inter partes* and that the inspector had not before him any *lis* which was pending between parties and which he had to decide. Swift, J., was reversed on appeal in *Errington's* case but upheld in *Marriott's* case. In the successful appeal in *Errington's* case, Maughan, L.J., observed " where there are objections there is a contest between the owners of the property and the local authority and there are two sides between whom the Minister had to come to a determination after consideration." The conception of a *lis* was adopted by Greer, L.J., in *Offer* v. *Minister of Health* (1935) 99 J.P. 347 where he referred to " the *lis* being joined between the objecting property owners and the local authority," an expression which was followed in *Horn's* case (1936), and in the post war housing compulsory purchase order cases of *Miller* v. *Minister of Health* (1946) 110 J.P. 353, and *Summers* v. *Minister of Health* [1947] 1 All E.R. 184 ; 111 J.P. 89. Lord Oaksey, L.J., in *Franklin* v. *Minister of Town and Country Planning* [1947] 1 All E.R. 612 ; 111 J.P. 118 (the *Stevenage New Town* case, where however it was held that there was no *lis*) explained " in all the authorities which have been referred to as showing that at an inquiry there must be an examination of the case of both sides there was what has been called a *lis*, that is to say there were two parties contending, and the Minister as an outside party was deciding the contest."

Later in 1947 the conception of a *lis* was fully considered in *Johnson's* case by the Master of the Rolls whose observations may be quoted with advantage, if at length. " ' *Lis*,' of course," says Lord Greene, M.R., at p. 399, " implies the conception of an issue joined between two parties. The decision of a *lis* in the ordinary use of legal language is the decision of that issue. The consideration of the objections in that sense does not arise out of a *lis* at all. What is described here as a *lis*—the raising of the objections to the order, the consideration of the matters so raised and the representations of the local authority and the objectors—is merely a stage in the process of arriving at an administrative decision. It is a stage which the courts have always said requires a certain method of approach and method of conduct, but it is not a *lis inter partes* and for the simple reason that the local authority and the objectors are not parties to anything that resembles litigation. A moment's thought will show that any such conception of the relationship must be fallacious because on the substantive matter, *viz.*, whether the order should be confirmed or not, there is a third party who is not present, *viz.* the public, and it is the function of the Minister to consider the rights and the interests of the public. That by itself shows that it is completely wrong to treat the controversy between the objector and the local authority as a controversy which covers the whole of the ground. It is in respect of the public interest that the discretion that Parliament has given to the Minister comes into operation. It may well be that on considering the objections the Minister may find that they are reasonable and that the facts alleged in them are true, but nevertheless he may decide that he will overrule them. His action in so deciding is a purely administrative action based on his conceptions as to what public policy demands. His views on that matter he must if necessary defend in Parliament, but he cannot be called on to defend them in the courts. The objections in other words, may fail to produce the result desired by the objector not because the objector has been defeated by the local authority in a sort of litigation but because the objections have been overruled by the Minister's decision as to what the public interest demands. Unless that aspect of this stage of the process is thoroughly appreciated the word *lis* may result in a completely fallacious approach to the type of problem with which we have to deal. Used in a broadly analogous sense and in order to avoid undue length of exposition the phrase is a convenient one but . . . mislead me into pressing what is a very loose analogy to a point which would lead to results which would be quite unacceptable."

Similarly the history of the courts' attitude to what has been called the Minister's quasi-judicial function is interesting. In *Errington's* case the Court of Appeal held that the Minister exercised a quasi-judicial function in confirming a clearance order under the Housing Acts, a decision which was accepted and applied in a number of cases ranging from *Offer* (1935) and *Horn* (1936) to *Price* v. *Minister of Health* [1947] 1 All E.R. 47 ; 111 J.P. 56, and *Summers* v. *Minister of Health* [1947] 1 All E.R. 184 ; 111 J.P. 89. Greer, L.J., in *Errington's* case laid down that in so far as the Minister dealt with the matter in the absence of objections by the owners it was clear that he was acting in a ministerial or administrative capacity. But the position was different where objection was taken and it was reasonable that he should be regarded as exercising quasi-judicial functions. " The effect of the order if confirmed " he pointed out " would be to diminish the value of the property owned by the objecting parties. The decision of the Minister is a decision relating to the rights of the objecting parties and is a decision in respect of which he is exercising quasi-judicial functions." In *Offer's* case (1935) the same Lord Justice said that in dealing with the subject matter when he came finally to deal with it the Minister was acting in a semi-judicial capacity, and he must in giving his final decision act judicially. Henn Collins, J., in the *Stevenage* case [1947] 1 All E.R. 396 ; 111 J.P. 118, treated the function of the Minister under the New Towns Act, 1946, as being also quasi-judicial in this sense only ; the House of Lords decided in the extreme circumstances of that case that the Act imposed no judicial or quasi-judicial duty on the Minister, and that (*per* Lord Thankerton) the only ground of challenge must be either that the Minister did not consider the report and the objections or that his mind was so foreclosed that he gave no genuine consideration to them. Opinion in the post-war cases of compulsory purchase orders departs from the idea of the Minister's considering quasi-judicially the confirmation of the order. In *Price* v. *Minister of Health* [1947] 1 All E.R. 47 ; 111 J.P. 56, Morris, J., accepted that the Minister must at some stage be acting purely administratively and that there would come a time when he was acting in a quasi-judicial capacity and that thereafter he might again enter on a period when he is acting administratively. The change in judicial outlook is again completed in *Johnson's* case. Referring at p. 405 to *Errington* and so forth, Greene, M.R., observes " they do not go beyond what the authorities laid down with regard to decisions of the Minister when acting quasi-judicially," but he does not accept that the Minister is acting quasi-judicially in confirming the order. When, therefore, is the Minister acting quasi-judicially ? The answer of the Master of the Rolls is to be found in the passage at p. 399—" but his functions are administrative subject only to the qualification that at a particular stage and for a particular and limited purpose there is superimposed on his administrative capacity a character which is loosely described as quasi-judicial. The language which has always been construed as giving rise to the obligations, whatever they may be, implied in the words

quasi-judicial is to be found in the duty to consider the objections which, as I have said, is superimposed on a process of ministerial action which is essentially administrative. The administrative capacity in which he acts re-appears at a later stage because, after considering the objections which may be regarded as the culminating point of his quasi-judicial function, there follows something which in my view is purely administrative, *viz.*, the decision whether or not to confirm the order. That decision must be an administrative decision because it is not based purely on the view he forms of the objection *vis-à-vis* the desires of the local authority, but is to be guided by his view of the policy which in the circumstances he ought to pursue." Lord Greene may again be quoted in *Robinson* v. *Minister of Town and Country Planning* [1947] 1 All E.R. 852; 111 J.P. 278 (the Plymouth Declaratory Order) " to say (p. 859) that in coming to his decision, he (the Minister) is in any sense acting in a quasi-judicial capacity is to misunderstand the nature of the process altogether. I am not concerned to dispute that the inquiry itself must be conducted on what may be described as quasi-judicial principles, but this is quite a different thing from saying that any such principles are applicable to the doing of the executive act itself, *i.e.*, the making of the order. The inquiry is only a step in the process which leads to that result . . ."

Certain observations of Slesser, L.J., in *Marriott's* case and *Horn's* case suggested a very restricted view that in deciding whether or not to confirm a clearance or compulsory purchase order the Minister was limited to the objections and matters disclosed during the course of the public local inquiry. The idea was categorically rejected in *Johnson's* case where at p. 401 Greene, M.R., explains that in coming to his decision . . . the Minister is entitled to have his mind informed in a number of ways. He is not limited to material contained in the objection, nor limited to arguments, evidence and considerations put forward by the local authority for the purpose of the consideration of the objections or put forward by the objectors themselves.

Current judicial opinion on the duty of the Minister in regard to objections is therefore very much in line with the earlier and original views expressed by Swift, J., in *Errington's* case and by Branson, J., in *Simeon* v. *Minister of Health* (1935) J.P. 167. Thus Swift, J.: " it does not say that he is bound by objections or that he is bound by the report, and obviously he cannot be. All that he has got to do is to consider them fairly and honestly, and then act as he might have acted if there had been no objections, upon such information or such view as he takes of the situation himself, giving proper weight to the objections which have been made and the report of the person who held the inquiry. The Minister is the only person who is to decide what the proper weight is and all the courts can say about it is that of course he must act fairly and honestly." Similarly in *Simeon's* case (of a compulsory purchase order under the Public Works Facilities Act) Branson, J., put it in this way, " it seems to me that the language indicates an intention on the part of the legislature to confer the right upon the Minister having held the inquiry to deal with the report which comes from the holder of the inquiry and to give his own consideration to objections which are not withdrawn and nothing more." The later and more matured views of the Court of Appeal are to be found in *Johnson's* case, where Cohen, L.J., observes " the Minister is not required to hear and determine the objection. The objection having been made he has to comply with the terms imposed upon him by the Act. He has to consider the objections and the report but he is not required to give a determination on the merits of the objection. He has in his executive capacity to decide whether or not to confirm the order. He may come to the conclusion that the objection is well founded but he may none the less confirm the order because he takes the view that it is in the national interest to disregard the objection." The Master of the Rolls in a passage at p. 397 is equally emphatic that there is nothing which imposes on the Minister any obligation with regard to the objections save the obligation to consider them.

[*To be continued*]

WEEKLY NOTES OF CASES

COURT OF CRIMINAL APPEAL

(Before Lord Goddard, C.J., Lynskey and Pearson, JJ.)

R. *v.* SANDERSON

Feb. 9, 1953

Criminal Law—Procedure—Witness for defence called after summing-up.

APPLICATION for leave to appeal against conviction and sentence.

The appellant was convicted at the Central Criminal Court before the Recorder of London of causing grievous bodily harm and was sentenced to three years' imprisonment. A witness whom the defence intended to call had not arrived in court at the conclusion of the case for the defence and did not arrive till the summing-up was nearly completed. On the conclusion of the summing-up defending counsel obtained leave to call the witness, and after the witness had given evidence, the recorder delivered a short supplementary summing-up relating to the evidence.

Held, distinguishing *R.* v. *Owen* (1952) (116 J.P. 244), where the court laid down that no witness for the prosecution must be called after the summing-up, that in the particular circumstances of the case the procedure followed was not open to objection.

No counsel appeared.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

QUEEN'S BENCH DIVISION

(Before Lord Goddard, C.J., Byrne and Gerrard, JJ.)

R. *v.* CAMPBELL. *Ex parte* HOY

Feb. 23, 1953

Plea of Guilty—Application on behalf of defendant after sentence to change plea and re-open case—No jurisdiction in court to grant.

APPLICATION for order of prohibition.

On December 18, 1952, Rose Lilian Lawford (" the defendant ") was charged before Miss Sybil Campbell, metropolitan magistrate at the Tower Bridge Magistrate's Court, on an information preferred by the applicant, Hoy, an investigation officer of Customs and Excise, with knowingly harbouring 262 pairs of American nylon stockings with intent to defraud Her Majesty of the duties thereon, contrary to s. 186 of the Customs Consolidation Act, 1876. The defendant elected to be tried summarily, and, on the charge being read to her, she said that she understood it and pleaded Guilty. The solicitor appearing for the prosecution then outlined the facts of the case, the defendant made a statement in mitigation, and the magistrate passed a sentence of four months' imprisonment. Later on the same day a solicitor acting for the defendant applied to the magistrate for the defendant to be allowed to change her plea and for a plea of Not Guilty to be entered. The magistrate granted this application and remanded the defendant. The applicant thereupon obtained leave to apply for an order of prohibition prohibiting the magistrate from proceeding further in the matter otherwise than by issuing a committal warrant.

The magistrate stated in an affidavit that the grounds of her decision were that the solicitor who made the application was well known to her, and she had every reason to trust him. She concluded that it was doubtful whether the defendant had fully understood the charge made against her, notwithstanding an explanation given to her by the deputy chief clerk. In considering the matter, she had taken into consideration the fact that, if she had refused the application, quarter sessions would refuse to hear an appeal against conviction, the defendant having pleaded Guilty. She would be reluctant, unless directed by the court to do so, to sign a committal warrant in respect of the defendant about whose guilt she was not entirely satisfied.

Held, that, once the magistrate had accepted a plea of Guilty, she was *functus officio* and had no power to allow the plea to be changed, and, therefore, the order of prohibition must issue.

Counsel: *J. P. Ashworth* and *R. J. Parker* for the applicant; *J. C. Mathew* for the defendant.

Solicitors: *Solicitor for Customs & Excise*; *Hawker & Wheatley*.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

PROBATE, DIVORCE AND ADMIRALTY DIVISION

(Before Collingwood, J., and Karminski, J.)

DAVIDSON *v.* DAVIDSON

Jan. 29, 1953

Justices—Husband and wife—Persistent cruelty—Sodomy alleged by wife—Corroboration—Acquiescence—Form of finding by justices.

On August 20, 1952, the wife issued a summons against the husband under the Summary Jurisdiction (Separation and Maintenance) Acts, 1895 to 1949, charging him with persistent cruelty to her. At the hearing before the justices on September 16, 1952, the wife alleged that the husband had committed acts of sodomy on her, to which she had at first consented because he persuaded her that such acts were a form of normal intercourse. There was no corroboration of these allegations, which the husband denied, and he further denied an allegation in cross-examination, not spoken to by the wife, that he had sought sexual intercourse *per oram*. The justices found that "there had been abnormal sexual practices" and that the husband had been guilty of persistent cruelty. On appeal by the husband,

Held: (i) acts amounting to unnatural sexual practices or sexual perversion were of great gravity, and where justices found charges of them proved they should state with precision and clarity the nature of the acts and not employ such a phrase as "abnormal practices."

(ii) the justices appeared to have failed to direct themselves as to the desirability, though not the necessity, of corroboration in cases of this kind, and also to have failed to consider the question of acquiescence by the wife, and, therefore there should be a re-trial.

Statham v. *Statham* ([1929] P. 131) and *B.* v. *B.* (1935) (99 J.P. 162), applied.

On the question of acquiescence the Court further held that the assent of a wife, especially a young wife, could not be true assent if the acts were forced on her, either literally or by fraudulent persuasion that such conduct was one of the normal incidents of married life.

Counsel: *Crispin* for the husband; *Stranger-Jones* for the wife.

Solicitors: *Gregory, Rowcliffe & Co.*, for *Wood, McLellan & Williams*, Chatham; *T. Boyd Whyte*, Gillingham.

(Reported by G. F. L. Bridgman, Esq., *Barrister-at-Law.*)

LAW AND PENALTIES IN MAGISTERIAL AND OTHER COURTS

No. 17.

PROTECTION OF WILD BIRDS

A resident of Ham, Surrey, appeared before the Richmond Justices on February 12 last to answer three charges relating to greenfinches and chaffinches. The charges alleged that the defendant knowingly and wilfully (1) used a trap for the purpose of taking certain wild birds; (2) had in his possession certain wild birds; and (3) used a net for the purpose of taking certain wild birds.

The summons alleged contraventions of s. 3 of the Wild Birds Protection Act, 1880, and art. 4 of the Wild Birds Protection (Surrey) Order, 1952.

For the prosecution, it was stated that on Sunday, January 4, 1953, inspectors from the R.S.P.C.A., visited defendant's premises. In his back garden, on a fence, were found two trap cages which were baited and had in them decoy birds, a chaffinch and a greenfinch respectively. Further down the garden, the inspector found a net which was also baited. In another part of the premises, in a small aviary, the inspectors found five other greenfinches and chaffinches. These birds, and the decoy birds, all bore signs of having been recently taken, in that they did not bear rings indicating that they had been born in captivity, their plumage bore a distinctive sheen, their claws were short and sharp, they had no perch sense, and were very wild.

The defendant, who pleaded guilty to each summons, stated that he was a member of a Caged Birds Society. He said that he did not know it was illegal to trap birds, and that he had only done so to breed from them, and not for any commercial gain for himself.

Defendant was fined £1 and £1 1*s*. costs on each summons, and the justices made an order forfeiting the birds, traps and net found in his possession.

COMMENT

Section 3 of the Act of 1880 makes it an offence for anyone between March 1 and August 1 in any year to (*inter alia*) use any lime, trap, snare, net, or other instrument for the purpose of taking any wild bird . . . or have in his control or possession after March 15 any wild bird recently killed or taken. The schedule to the Act details the wild birds protected by the Act, and s. 3 provides for a maximum penalty of £1 upon conviction.

It will be recalled that the words "recently taken" in s. 3 were defined by Salter, J. in *Harris* v. *Lucas* (1919) 83 J.P. 208, as meaning so recently taken that the bird had not had time to become tame. Neither greenfinches nor chaffinches are included in the schedule, and it will be noted that the close season under the Act commences on March 1.

The Wild Birds Protection (Surrey) Order, 1952, made by the Secretary of State under powers conferred by s. 8 of the Act of 1880 and subsequent Acts, details in art. 1 of the order a large number of wild birds which are to be protected during the whole of the year, but neither greenfinches nor chaffinches are included in the list.

Article 4 of the order, however, provides that during that period of the year to which the protection of wild birds under the Act of 1880, as extended by this order, does not extend the taking or killing on Sundays and Christmas Day of *any* wild bird is prohibited throughout the administrative county of Surrey, and art. 8 provides that the order was to come into operation on January 1, 1953.

The Forfeiture Order made by the justices was made in pursuance of s. 4 of the Wild Birds Protection Act, 1896.

The writer is indebted to Mr. E. Dodds, clerk to the Richmond Justices, for information in regard to this case. R.L.H.

No. 18.

A RELUCTANT JUROR

An unusual application came before the Newington justices on February 12 last, when a young man sought a declaration that he ought not to be marked as a juror.

The facts which led to the application were that the town clerk of Camberwell, in his capacity of registration officer, marked the applicant's name as a juror in the Electors Lists. The latter claimed exemption from jury service on the ground that he was a member of the regular army reserve, and upon the registration officer refusing to remove his name as a juror, the applicant brought the matter before the justices.

At the hearing before the justices, the applicant based his claim for exemption exclusively upon the ground that the premises he occupied were of insufficient rateable value to qualify him for service, and as the town clerk had received no previous notification whatever that the applicant intended to switch the grounds of his application, an adjournment was granted by the justices to enable the town clerk to deal with the new ground of objection, and the court indicated that there would be no objection to the town clerk communicating with the applicant prior to the adjournment, with a view to satisfying him if possible that the ground of his objection was misconceived. Before the date of the adjourned hearing, the applicant wrote to the clerk to the justices withdrawing his application.

COMMENT

This application was the first of its kind to come before the Newington justices for over thirty years, and it is understood that similar applications are made but rarely in other parts of the country.

Section 1 (2) of the Juries Act, 1922, requires the registration officer, in making out the Electors Lists for the autumn register for any year in pursuance of the provisions of the Representation of the People Act, 1918, to mark in the prescribed manner the names of such of the persons included in the lists as are qualified and liable to serve as jurors. Subsection 4 of the section provides that any person who is marked as a juror and who claims that by reason of some disqualification or exemption he ought not to be so marked, may apply to the registration officer to have the mark placed against his name removed, and the registration officer is obliged forthwith to consider the application, and to notify the applicant of his decision.

Subsection 5 of s. 1 enacts that if the registration officer refuses to comply with an application made under the last preceding subsection the applicant may, within fourteen days after the date on which the refusal of the registration officer is notified to him, apply to a court of summary jurisdiction for a declaration that he ought not to be marked as a juror. The subsection provides that rules may be made by the Lord Chancellor for regulating the manner in which applications are to be made under this subsection, and for requiring the decision of the court to be notified to the sheriff of the county and to the registration officer,

and for authorizing the sheriff to make the necessary correction in the Jurors Book.

The Lord Chancellor has not, in fact, exercised his power to make rules under this subsection, and it is, therefore, at the discretion of the court as to the manner in which the matter is dealt with.

R.L.H.

PENALTIES

Sutton Coldfield—February, 1953—obtaining clothing by false pretences (three charges). Twelve months' imprisonment. Defendant, a domestic servant aged thirty-one, falsely pretended that she was an official collector of clothing for East Coast flood victims. The total value of the clothing in the three charges to which defendant pleaded guilty was £8 13*s*. Seven other offences of obtaining clothing worth £51 by false pretences and six cases of attempted false pretences, were taken into consideration.

West Bromwich—February, 1953—selling nylon stockings at an excessive price (two charges). Fined £5 on each charge and to pay £5 5*s*. costs. Total over-charge was 7*s*. 2*d*. Defendant was fined for a similar offence twelve months ago.

Doncaster—February, 1953. Sending a telegram which defendant knew to be false for the purpose of causing annoyance, inconvenience or needless anxiety to another person. Fined £5. Defendant, a sub-contractor, sent a telegram to his home saying that he had been killed.

PARLIAMENTARY INTELLIGENCE

Progress of Bills

HOUSE OF LORDS

Wednesday, February 25

TRANSPORT BILL, read 2a.

HOUSE OF COMMONS

Wednesday, February 25

DEATH OF THE SPEAKER BILL, read 1a.

Thursday, February 26

ROYAL TITLES BILL, read 1a.
PREVENTION OF CRIME BILL, read 2a.
TOWN AND COUNTRY PLANNING BILL, read 3a.

Friday, February 27

SIMPLIFIED SPELLING BILL, read 2a.
PHARMACY BILL, read 2a.
ABORTION BILL, read 2a.

REVIEWS

Paterson's Licensing Acts. Sixty-first Edition. By F. Morton Smith, B.A., Solicitor and Clerk to the Justices of Newcastle-upon-Tyne. London : Butterworth & Co. (Publishers) Ltd., Shaw & Sons, Ltd. Price 57s. 6d. net.

Of all branches of the law of England, licensing law is perhaps the most self-contained. With no roots or principles grounded in common law, it is a law unto itself ; and, unlike other branches of statute law, it is not so much the codification of advanced public opinion as the line of expediency drawn delicately between two grimly opposed schools of thought. Progress along this line is often as tricky as tight-rope walking and no wise practitioner travels far without the most recent edition of *Paterson* within easy reach. No less important than its annual appearance is the exact timing of the event, and editor and publishers deserve thanks that once again the new edition was published before that hectic first half of February during which every petty sessions area in England and Wales holds its annual brewster sessions : and this notwithstanding the passing of the Customs and Excise Act, 1952, at a time which must have disrupted the preparation time-table.

The digression brings us back to our original point : of all branches of the law of England, licensing law is perhaps the most self-contained. And it is completely contained, as ever, in *Paterson's Licensing Acts*, now in its 61st Edition. Mr. Morton Smith in his Preface, following the admirable tradition of giving an editorial review of changes and developments since the previous edition, expresses a " pious hope " that a consolidating Licensing Bill will be presented to Parliament in the near future. That there is an undoubted need for such a Bill is exhibited almost weekly in the Practical Points columns of this journal, and we are glad to know from a statement made by the Attorney-General in the House of Commons on May 19 that licensing law is among the number of matters referred to the Lord Chancellor's Statute Law Committee for consideration. The new Magistrates' Courts Act and Rules provide a model of what might be done : the new Customs and Excise Act consolidates many enactments on the revenue side of the subject ; but there is a greater need, it is submitted, in that part of licensing law which falls to licensing justices to administer.

Mr. Morton Smith has prepared this edition with his customary painstaking efficiency. All the reported decisions of the High Court falling within the scope of licensing law to the end of Trinity term have been incorporated in the work and have been adequately footnoted to the relevant statutes. On all points which invite the critical attention of a reviewer we find that this, the seventh edition for which the present editor has been responsible, touches the high standards that practitioners in licensing law have learned to expect.

PERSONALIA

OBITUARY

SIR FELIX CASSEL, BART., Q.C.

We announce with regret the death at the age of eighty-three of Sir Felix Cassel, Bt., Q.C., who was Judge-Advocate-General of the Forces between 1916 and 1934. The Right Honourable Sir Felix Cassel, first Baronet, was born in 1869, the son of Mr. L. S. Cassel and a nephew of Sir Ernest Cassel.

He was educated at Harrow (where he was a Spencer Scholar) and at Corpus Christi College, Oxford, where he took a first class in Classical Moderations and in Law. Called to the Bar by Lincoln's Inn in 1894 he became a K.C. in 1906. In 1907 he was elected to the L.C.C. for West St. Pancras and after unsuccessfully contesting Hackney in the General Election of 1910 he became M.P. for West St. Pancras the same year and held the seat until 1916 when he was appointed Judge-Advocate-General. In the meantime he had served with the Army in France.

He carried the heavy burden of this office throughout the war notwithstanding criticisms in Parliament as to his unsuitability due to his alien origin and in 1920 his valuable services were recognised by a baronetcy.

In 1935 he was Treasurer of Lincoln's Inn and in 1937 he was sworn of the Privy Council. He served on the Departmental Committees on Compulsory Insurance and Courts-Martial between 1926 and 1938. In his year of office as Treasurer in 1935 Sir Felix endowed Lincoln's Inn with Funds for three Scholarships to commemorate his term of office during the Silver Jubilee year of King George V, the Senior Master of the Bench. The Cassel Scholarships are to the value of £200 per annum and are tenable for a period of three years. They are for " the encouragement of the study of the law and the advancement of legal education." Besides his many philanthropic interests Sir Felix served as High Sheriff of Hertfordshire in 1942.

SIR BARTLE FRERE, Q.C.

We announce with regret the death of Sir Bartle Frere, Q.C., Chief Justice of Gibraltar from 1914 to 1922, at the age of ninety. Sir Bartle had a distinguished career in the Colonial Legal Service and later in Local Government in Norfolk.

Born in 1862 he was educated at Charterhouse (where he was a Junior and Senior Scholar) and Trinity College, Cambridge, where he read law and graduated in the Law Tripos in 1884. In 1887 he was called to the Bar by Lincoln's Inn and joined the South Eastern Circuit. He did not remain in practice for long but joined the Colonial Service, being sent to Cyprus. In 1897 he became President of the District Court at Famagusta and in 1899 President of the Court at Nicosia. After holding these appointments he spent the whole of his career at Gibraltar, becoming police magistrate and Coroner and in 1911 Attorney-General when he took silk. Sir Bartle Frere was one of the best known figures at Gibraltar and wrote a legal book about its Laws.

For the three years following he acted as legal adviser to the British Minister in Morocco and to the Admiralty and to the War Office in Gibraltar until in 1914 he was appointed Chief Justice. His term on the Bench coincided with a difficult period in the history of " the Rock " and he was more than equal to the challenge. His personal qualities, fine presence, and legal learning made him an excellent Judge and he was most popular with the mixed population of Gibraltar.

Retiring in 1918 when he was knighted Sir Bartle went to live in his native Norfolk (he was a son of the Rectory) and took a prominent part in the affairs of that County serving as Vice-Chairman of the Norfolk County Council and as High Sheriff in 1930. From 1938 in 1941 he was County Controller of Civil Defence.

Mr. Andrew Edwin Kidd, senior partner in the firm of Messrs. R. & R. F. Kidd & Stockdale, solicitors of North Shields, died on February 20, at the age of eighty-three. Mr. Kidd was admitted in 1893 and was magistrates' clerk for the county borough of Tynemouth from 1923 until August, 1952, when he retired owing to ill health.

THE WEEK IN PARLIAMENT

From Our Lobby Correspondent

PREVENTION OF CRIME BILL

The Prevention of Crime Bill has been given a Second Reading without a division and committed to a Standing Committee of the House of Commons.

Moving the Second Reading, the Secretary of State for the Home Department, Sir David Maxwell Fyfe, indicated the size of the problem of crimes of violence. The figures of " felonious wounding " offences known to the police in England and Wales were : 1938, 388 ; 1948, 646 ; 1949, 625 ; 1950, 976 ; 1951, 1,078 ; 1952, 1,023. The " malicious wounding " figures were : 1938, 1,602 ; 1948, 3,547 ; 1949, 3,705; 1950, 4,201; 1951, 4,445; and 1952, 4,866. We were now faced with a level of violent crime roughly treble the pre-war rate.

Those were disturbing figures. Many of those offences did not necessarily involve the use of offensive weapons, but too many did. Crime could not be abolished by legislation, and the Bill represented only one facet of the attack on crime. Other more important steps included the improvement of our penal system and the full development of the reforms instituted under the Criminal Justice Act, 1948, especially those which dealt with persistent offenders and with juvenile offenders. Another step was to bring our police forces up to strength, especially in the big cities. But even those measures would be of limited effect unless they could arrest the decline in moral standards.

The Bill should not be looked upon as an isolated proposal. His claim for it was that it would bring an immediate strengthening to the forces of law and order in the fight against crime. Responsible chief officers of police assured him that such a provision was likely to be of great value in placing a curb on violent crime.

The Bill might not of itself be effective in stopping a criminal who, of set purpose, addressed himself to a criminal enterprise, taking with him such articles, including weapons, as he thought might help him to carry out that evil business successfully. But there was a large number of people on the fringe of the criminal community who would resort to crime if opportunity presented itself. Among those, and others with a lax standard of conduct, there was a growing tendency to slip a weapon—perhaps a knife or a knuckle-duster—in the pocket. Such a person might get into a quarrel, perhaps after a drink or two, and then the weapon was brought into use. Again, there was the type of young ruffian who, often in a gang with others of the same kidney, set out to terrorise other people in the neighbourhood.

It was primarily against persons of that type that the Bill was directed ; and it was the view of responsible and experienced police officers that the knowledge that the mere possession of an offensive weapon carried a liability to a substantial penalty would have a salutary effect. As he saw it, the Bill was likely to achieve its main effect, not in a vast number of prosecutions, but *in terrorem*, and in securing a reduction in the extent to which weapons, or articles capable of use as weapons, were carried at all.

He went on to say that the Bill gave no power of search. It would not enable a police constable at his whim to stop a passer-by in the street and feel in his pockets to see if he was concealing a knuckle-duster. But they all knew that there were many ways in which it might come to the notice of the police that a person was carrying an offensive weapon. In the course of their normal crime prevention duties, police officers often had occasion to keep persons under observation. If they saw such a person had with him an instrument of violence, they would be able to deal with him under the Bill. They would be able to cope with the " cosh boy " before he had used his cosh, and it would be up to him to explain for what lawful purpose he was carrying a bludgeon or a life-preserver.

The offence which the Bill created was limited to the possession without lawful authority or excuse of an offensive weapon in a public place. The term " public place " was defined by cl. 1 (3) as including, " any highway . . . or place to which at the material time the public had or were permitted to have access, whether on payment or otherwise."

The principal difficulty had been to define the term " offensive weapon." The definition in cl. 1 (3) included three groups of articles. First, the article made for causing injury to a person, *i.e.*, the stiletto or knuckle-duster. Second, the article adapted for use for causing injury to persons, *i.e.*, a sock full of sand or a piece of wood with a razor blade inserted into it. Third, there was the article intended by the person possessing it for use for causing injury. That covered items innocent of themselves, which in the circumstances in which they were carried gave rise to a reasonable apprehension of an intention to use them as weapons. A bicycle chain could be included in that category. There was a habit among criminals of breaking a bicycle chain and putting it under a coat collar so that it was convenient for use as an offensive weapon.

To establish that an article fell within that third category, the prosecution would have to satisfy the court that there were sufficient grounds for believing that the person carrying the weapon intended to use it for causing injury to another person. That provided an important safeguard for the innocent person.

If the court was satisfied that an article was an offensive weapon within one of those three groups, the person concerned was guilty of an offence unless he could show that he had a lawful authority or excuse to have the weapon with him. The requirement that it was for the accused to prove that he had lawful authority or excuse, although exceptional, was by no means without precedent. He gave as example the Public Order Act, 1936, s. 23 (2) of the Firearms Act, 1937 and s. 28 (2) of the Larceny Act, 1916. He admitted that the Bill was drastic but the circumstances required drastic measures.

The innocent citizen had nothing to fear from the Bill. An offence under it would ordinarily be disclosed only if a person came to the notice of the police because his conduct had in some way or other aroused their attention. The power of arrest without warrant in cl. 1 (2) was strictly limited. No general power to arrest without warrant was given by the Bill, the two classes of cases in which the power might be exercised being, first, if the constable was not satisfied as to a person's identity or place of residence, and, secondly, if he had reason to believe that it was necessary to make the arrest in order to prevent the commission of any other offence.

It was not enough to deal with the offender after he had attacked his victim. The forces of the law had to be able to intervene. If there was good reason to believe that a man was carrying a weapon, it was surely right that a constable who was called to the scene should be armed with effective powers to stop an assault or attack taking place. It was no less reasonable, if an individual could not identify himself to the satisfaction of the constable, that he should be taken into custody on the spot.

The police had certain powers of arrest without warrant at common law, and many Acts of Parliament gave them the power in relation to certain offences. For example, s. 41 of the Larceny Act, 1916, empowered any constable to arrest a person without warrant if he had reasonable cause to suspect him of having housebreaking implements by night.

The powers in the Bill were much more restricted than that. A constable who arrested without warrant under cl. 1 (2) was always liable to proceedings being brought against him for wrongful arrest.

Sir David concluded by dealing with the question of firearms. He said it might well be that in certain circumstances the court would hold that a firearm was an offensive weapon for the purposes of the Bill. But the penalties provided, notably in ss. 22 and 23 of the Firearms Act, 1937, for the criminal possession and use of firearms were far heavier than anything contemplated under the Bill in respect of other offensive weapons. The possession of firearms with intent to endanger life or to cause serious injury to property, and the use of a firearm or imitation firearm with intent to resist arrest were indictable offences which might be punished by imprisonment of up to fourteen years. He wished to make it clear that those offences and penalties were not affected by the Bill.

Welcoming the Bill on behalf of the Opposition, Mr. Chuter Ede (South Shields) said he believed that, administered by the police forces of this country, supported by the magistrates and those in higher authority in the judicial system when convictions had been obtained,

it was a necessary step towards re-establishing our belief in this country in the rule of law and in the avoidance and condemnation of violence.

PRISON SENTENCES ON YOUTHS

Answering questions in the Commons, the Home Secretary stated that the number of youths between the ages of seventeen and twenty-one sentenced by magistrates' courts to imprisonment without the option of fine in 1951 was 667. The corresponding figures for the four previous years were: 1947, 1,646; 1948, 1,529; 1949, 635; 1950, 741.

During the three years 1949 to 1951, a total of 157 youths of that age were committed to institutions for mental defectives under s. 8 of the Mental Deficiency Act, 1913, after being found guilty of an offence by a magistrates' court.

THE FUTURE OF CONTROLLED SELLING PRICES

The remark made in the House of Commons recently by the Minister of Housing and Local Government that he proposed making a statement later in the Session on the control of selling prices (hereafter to be taken to include rents) of post-war houses, has naturally given rise to considerable speculation on the future of this particular brand of state-imposed interference with the normal working of economic laws.

The control was originally made effective by s. 7 of the Building Materials and Housing Act, 1945, in providing legal sanctions for conditions imposing a maximum selling price on houses built under the authority of a building licence issued pursuant to Defence Regulations, and, with what evidently was a brave attempt at anticipating the return of normality, the section was expressed to be limited to four years, that is, until December 20, 1949. Although opinions differ, some consider that in view of the wording of s. 7 (3) and s. 7 (5), in particular, exchanges and leases were caught by the Act, but conversions escaped until 1949, when they, too, were netted by the Housing Act of that year, which also extended the operation of control for a further four years until December 20, 1953. It is only fair to add that the same Act did make a rather feeble gesture of recognizing the fact that owner-occupiers and even landlords were sometimes given to improving their properties, for by s. 43 local authorities were authorized to increase selling prices against the cost of works executed after the provision of the property. Selling prices were made registrable as local land charges.

In addition to conversions carried out under the 1949 Act, it is disclosed in the latest return of the Ministry of Housing and Local Government that over 170,000 houses have been built privately in England and Wales since the war, the great majority of which will be subject to control. It is, therefore, a matter of considerable importance to a great many owners and their advisers whether or not control will be modified or altogether discontinued after December next, and it will not be surprising if the persons concerned ask themselves—and their Members of Parliament—upon what principles it is sought to justify price control at all. The same people will probably have noticed that the Housing Act, 1952, passed late in the year, could have been a convenient occasion for an extension of control in some form or other, and the fact that nothing was then said might well have raised hopes that no such continuance was in fact contemplated.

Reasonable people will hardly dispute the fact that in the difficult years immediately following the end of the war, the acute shortages of labour and materials demanded a rigorous regulation and a just distribution of available national resources, but the very need for this pervasive and widespread control requires its originators always to have clearly in mind the objective they wish to attain by the particular regulation concerned, and, when that is plain, it is their equally important duty to make sure that the control in question will in fact achieve its purpose, and no more.

What was, then, the motive behind s. 7 of the 1945 Act? What was sought to be done was clear enough from the simple English of the section and the relevant part of the preamble, but why it sought to do it is very difficult to understand, and one can only surmise that here again our legislators have succumbed to the ever-present temptation of imposing control for control's own sake and have been afflicted by that longstanding governmental malady perhaps best described as bifurcation of the objective.

It is common knowledge that after the war the prices of pre-war houses rose to several times their 1939 value, a situation which inflicted especial hardship on ex-servicemen and others whose domestic circumstances had been disrupted by the years of conflict, and which gave concern to Members of Parliament, if one may judge from the many questions on the matter addressed to the appropriate Minister. The invariable reply, the reasonableness of which must be accepted, was that it was quite impracticable for the Government to devise an effective scheme of price control of the many millions of pre-war houses which were changing hands in great numbers, with the result that these transactions perforce took place in accordance with the well-understood rule of inadequate supply and urgent (and frequently undiscriminating) demand.

With the buying and selling of these vast numbers of pre-war properties finding its own unrestricted economic level, one is bound to inquire why, on the footing of logic or fairness, it was necessary to impose price control on the comparatively few built under licence since 1945. As has been said, the purpose of the 1945 Act was, plainly, the prevention of re-sale at a higher price than that laid down by the local authority, which price, roughly speaking, may be taken to cover the cost of the house and land, but, surely, all that should have concerned the Government in times of scarcity of materials and labour was that these precious elements should be allocated to those persons considered most in need. This purpose the Government completely achieved by the method, their own choosing, of delegating the issue of building licences to local authorities, whose knowledge of conditions in their own areas probably made them the best practical instrument of distribution. What further control was then necessary? If the local authority decided, after the most searching examination of competing claims, that certain persons were in the greatest need of building licences, then the sole be-all and end-all of labour and materials control had been completely realized and any further restriction became superfluous. Was it likely that after his need had been considered sufficient to pass the scrutiny of the local authority that the licensee would be able, let alone desire, to re-sell at all and have to look for other accommodation? In a few cases it would probably have happened that for some such reason as a change of job involving removal to another district a licensee would need to sell, in which case how could it affect the fair distribution of scarce materials if he were to sell his house at its market price, seeing that in any case he would almost certainly have to buy a pre-war house elsewhere at an uncontrolled figure. To force price control in such circumstances is wholly unjust and illogical and can serve only to provoke the ordinary man into the surreptitious transactions, involving the charging (and willing payment) of secret inducements over and above the controlled price, which one suspects has happened more than once.

Apart from the objection of illogicality which has always

existed, there is now the additional argument against price control in that because of the present liberal licensing policy, the abolition of development charges and the general shortage of money, the seller's market in pre-war houses is fast disappearing and will shortly vanish completely, with the result that price levels of all properties will very soon be equivalent to current building costs of similar houses, and there will consequently be no possibility, in any event, of re-selling a new house at a profit.

Price regulation, therefore, which has always been without logical justification, and which has put an unfair premium on the honesty of the average man, has become utterly pointless with the advent of virtual freedom in house-building, and it is to be hoped that the Government will recognize this fact, abolish the fiction of control, and relieve local authorities of the unnecessary burden of fixing, recording and enforcing this entirely irrational and outmoded form of restriction.

AGRICOLA.

LATE SITTINGS

" 'Some people' said Humpty Dumpty, looking away from Alice as usual, 'have no more sense than a baby!'" This proposition, though formulated on the highest authority, seems to us to involve the fallacy known to the logicians as *ignoratio elenchi* or, more colloquially, " barking up the wrong tree." It would take a lot to convince us that a baby of any age is deficient in sense; to us the species seems to be endowed with more than enough of acute understanding, fiendish cunning and malice prepense. The baby's character is incurably egocentric. He, she or it (the sex up to a certain age is by common consent treated as indeterminate) is an adept at shamming sleep when it is time to wake up and be fed, and at being vociferously wakeful when everybody else wants to sleep; deceiving its gullible parents with a simulation of pacific intent so long as they continue to yield the little creature their undivided attention, but bursting into blood-curdling screams the moment they turn their backs. These anti-social habits have in the past confronted the baby's progenitors—except for the fortunate few who have adequate home-help—with the choice between sharing a cloistered domesticity for years on end, or spending their leisure hours apart—the one keeping lonely vigil over the sleeping infant at home, the other snatching a solitary hour or two at theatre or cinema, in club or " pub." We say nothing of the irresponsible alternative of leaving the child in the house alone and taking the risk of returning to find that it has set the bedclothes on fire, swallowed a bottleful of pheno-barbitone or cut off its head with daddy's razor. Some people (as Humpty Dumpty might have said) will go to any lengths to attract attention to themselves.

These difficulties have brought into existence a class of shock-workers (as they would doubtless be called in Eastern Europe) whose function it is, sometimes for valuable consideration, and sometimes out of natural love and affection, to take a turn of duty in a baby-ridden home, usually in the evening, so that the parents may enjoy a few hours of freedom. These conscientious persons, who have come to be known as " baby-sitters," are expected to assume a strategic position in reasonable proximity to the child's room—near enough to hear if it becomes wakeful and requires some kind of mistration, but not so near as to prevent enjoyment of the radio-programme during the quiet periods (if any). Baby-sitting is rather like standing sentinel over an unexploded bomb—you never know whether, and when, it is liable to go off—with the added disadvantage in the former case that there is no means, as there was in the latter, of removing the detonator and rendering it innocuous. In both cases the effects of the explosion, though not equally lethal, are exhausting and shattering to the nerves, and it is not surprising that demand, in the one vocation as in the other, should far exceed supply. The night-nursing described in *Martin Chuzzlewit* was simplicity itself in comparison: " The easy-chair ain't soft enough," said Mrs. Prig to Mrs. Gamp, adding, as she pointed to the invalid in the bed, " You'll want his piller." (Try that on a present-day, high-powered baby, and note the result.) Yet Sarah Gamp was considered " the best of blessings in a sick-room ". " Send a boy to Kingsgate Street," advised Betsy Prig, " and snap her up at any price, for Mrs. Gamp is worth her weight, and more, in goldian guineas."

The baby-sitter, then, is a comparatively modern institution; folk-lore, legend and drama provide illustrations of other, and more summary ways of dealing with the problem. Mr. Punch solves his by the drastic method of flinging the infant out of the window, to the intense delight and satisfaction of the juvenile portion of his audience. Oedipus, whose name means " Swell-Foot," was so called because his father, King Laïus of Thebes, caused the child's ankles to be pierced and tied together before leaving him to die (as he hoped) of exposure on Mount Cithaeron—and all because of an alleged prophecy that the child was fated to slay his father and wed his mother in later life. We have long suspected that Laïus put about this unlikely story as a pretext for getting rid of a noisy and troublesome brat about the place. In ancient Carthage parents are said, in periods of emergency, to have surrendered their infants to the priests of Moloch for sacrifice at the altar. The Babes in the Wood, as everybody knows, were handed over for quick despatch to two Robbers who, however, proved more kindly than the wicked foster-parents. (Nowadays the same result would be achieved by insuring them heavily and sending them out to play in the main road amidst the traffic). We find the same theme again in *The Winter's Tale*, and in many other plays, both earlier and later, where the long-lost child, having attained years of discretion, is welcomed back to the arms of its sorrowing relatives. What attitude they would have taken if it had been brought back by a policeman within a matter of hours is never disclosed. As for Pharaoh's daughter who (as described in *Exodus*) brought home the infant Moses with the story that she had " found him in the bulrushes ", comment is superfluous. *Res ipsa loquitur*.

Despite these sordid precedents, promoters of the drama in the venerable City of Salisbury have introduced an innovation as practical as it is ingenious. The box-office at the Arts Theatre is no longer to limit itself to booking seats and issuing tickets, but will also act as an agency for providing baby-sitters for would-be patrons. It would perhaps be tactless to describe this double function as " killing two birds with one stone," but, making allowance for metaphorical hyperbole, that is what it amounts to. To increase the size of audiences, to promote the interests of the dramatic art, to preserve consortium between spouses and to enhance the security of infant life and welfare—all these are worthy objects indeed. The idea is likely to become popular, and the practice, once recognized, will spread to the Metropolis in next to no time. Fortunes await those bold impresarios who will provide, at their theatres, facilities for ordering " Two eight-and-sixpennies and a baby-sitter for Saturday week, please! "

A.L.P.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Adoption—*Illegitimate child of married woman—Air Force allotment paid by putative father—Whether consent required.*

An application has recently been made to my court by a husband and wife to adopt the wife's illegitimate son aged four. The application form stated that the whereabouts of the child's father was unknown. At the hearing, however, it appeared from the report of the *guardian ad litem* that the father of the child was in the Air Force and that the mother had regularly received an allowance of 14*s.* per week under a voluntary allotment by the father from the date of birth down to the present time. It was stated by the mother that she had not communicated with the father since the birth and did not know his address—the allowance being paid through the Post Office. No affiliation proceedings have ever been taken by the mother against the father, neither was any formal written agreement entered into between the parties. Before the birth the father said he would make the voluntary allotment, and this was done.

On the facts stated above is the father of the child a "person who is liable by virtue of any order or agreement to contribute to the maintenance of the infant"? STILT.

Answer.

There being in this case no written agreement, the only question is whether the promise made before the birth of the child brings the case within s. 2 (4) (*a*) of the Adoption Act, 1950. We doubt whether it does, but as he has been contributing towards the maintenance of the infant we consider he should be served with notice of the application, by virtue of Rule 9 (*d*) of the Adoption of Children (Summary Jurisdiction) Rules, 1949, as substituted by the Rules of 1952.

Even if there were an agreement, it would come to an end on the making of the adoption order, Adoption Act, 1950, s. 12.

2.—Children and Young Persons—*Removal of child to place of safety—Escape of child—Whose duty to return.*

A rather interesting point has arisen concerning the operation of a section of the Children and Young Persons Act, 1933, and I should be exceedingly grateful if you would be good enough to give me the benefit of your opinion on the following matter, the details of which I shall try to set out briefly.

1. The local education authority is responsible for carrying out duties in connexion with Part I of the Children and Young Persons Act, 1933, relating to the wilful neglect, etc., of children.

2. In pursuance of their duties let us assume that one of their officers visited a family's address and found the children were so neglected, and he decided that they should be removed forthwith.

3. He did not have in his possession a magistrate's order for the removal of the children (s. 67 of the Children and Young Persons Act) and the hour was too late for him to obtain one. He therefore contacted a police constable and the children were duly removed to a place of safety, namely a home operated by the children's department.

4. Assuming one of the children absconds from the place of safety and is apprehended, the question arises as to whose responsibility it is to arrange for the child's return to the home. Should the education authority, the police, or the children's officer, be responsible for escorting the child back to the place of safety?

5. I ought to add that the education authority is conducting the prosecution. S.Y.P.

Answer.

In this case it appears that the child was removed to the place of safety by a constable acting under s. 67 (1) of the Act. It seems to us, therefore, that it is open to the constable to act again in the same way, and on the whole we think it preferable that he should do so rather than leave it to the keeper of the place of safety whose authority, it might be argued, is only to detain and not to retake the child, unless authorized by a court of justice.

3.—Fire Services Act, 1947—*Water Supply—Notice by undertakers of new works.*

Under provisions of s. 16 of the Fire Services Act, 1947, a person who proposes to carry out any works for the purpose of supplying water to any part of the area of a fire authority is required to give notice in writing thereof to the fire authority. Such written notice is of little use to the fire authority unless it is accompanied by detailed plans, etc. If a water undertaker refuses to supply full particulars and detailed plans of a proposed scheme, can he be compelled to do so? If the answer is in the affirmative, is the cost of providing such plans, etc., to be borne by the water undertaker or by the fire authority? In this connexion s. 14 of the Fire Services Act, 1947, and in particular the provisions of that section relating to hydrants, may be of interest. P.F.M.

Answer.

The notice should, in our opinion, give sufficient detail to enable the fire authority to exercise its powers under ss. 32–34 of sch. 3 to the Water Act, 1945. We think that for any further elaboration desired by the fire authority the water undertakers can properly require payment.

4.—Highways—*Trimming of hedges, etc.*

Under s. 65 of the Highway Act, 1835, and s. 23 of the Public Health Act, 1925, it is possible in certain circumstances to require the owner of land adjoining a highway to lop or trim trees or hedges overhanging the highway, at his own expense. My county council is concerned in particular with the prevention of obstruction to the view of vehicle drivers. The procedure under s. 65 Highway Act, 1835, is exceedingly cumbersome and, in any event, it appears that the powers under the section are only available if the highway is prejudiced or if physical obstruction is caused. According to an opinion recently given by counsel, the powers of s. 23 of the Act of 1925 are not available for the roads about which my council is concerned. I am wondering whether my council could act under s. 4 of the Roads Improvement Act, 1925, doing the necessary work at its own expense. The power given by that section is to require an occupier "to alter the height or character of any . . . hedge."

The view has been expressed that this power cannot be exercised if the trimming of lateral growth is involved, whether or not in addition to altering the height or character.

I would be grateful if you could advise whether

1. That is a correct view;
2. There is any other Act under which my council could proceed.

P. MELINFAB.

Answer.

1. The Minister, a county council, or other highway authority, may act under s. 4 of the Roads Improvement Act, 1925. Power is given by that section to direct the alteration of the height or character of any hedge and "hedge" by s. 11 of that Act includes any tree or shrub whether forming part of a hedge or not. Alteration of height or character would, in our opinion, include trimming of lateral growth and would extend to felling, where needed for the purposes of the section. The limited scope of the section should not be overlooked.

2. We know of no power other than the statutory provisions cited.

5.—Magistrates—*Jurisdiction and powers—Arrest without warrant by English police for offence committed in Scotland—Taking before English court to be remanded.*

A man calls in the police station in a Lancashire borough and says he has come to give himself up for taking a motor-car from Glasgow without the owner's consent and abandoned it in the northern part of Lancashire, which is some considerable distance away from his home. Inquiries are made by the police and it is confirmed that a car was taken from Glasgow and has been abandoned at the place mentioned by the caller. The man is arrested and it is arranged for the Glasgow police to pick him up. There is, however, a delay in doing this and the man in question has been in custody for more than twenty-four hours. The possible offences are larceny or taking a motor vehicle without consent and of course there is no warrant.

What powers has the local borough justice of remanding the man in custody with a view to his awaiting a police officer from Scotland with a warrant? JUN.

Answer.

English law does not apply in this case because the offence was committed in Scotland. The police had no power to arrest without warrant for an offence committed in Scotland. There should have been a Scottish warrant duly endorsed under s. 15 Indictable Offences Act, 1848. The local borough justices have no jurisdiction to deal with the accused.

As to arrest without warrant in these circumstances *see Diamond* v. *Minter* [1940] 1 All E.R. 390 at p. 399 where Cassels, J., said that, apart from a *dictum* which he did not follow, he could find no authority for the proposition that a constable in England can arrest without warrant a person whom he reasonably suspects of having committed out of England an offence which would be felony if committed in England.

6.—National Assistance—*Removal of person needing care and attention—National Assistance Act*, 1948: *s.* 47—*National Assistance (Amendment) Act*, 1951.

In connexion with the removal to suitable premises of persons in

need of care and attention a question has been raised as to the construction of s. 1 (3) of the 1951 Act which lays it down that an order authorized by the section may be made " either by a court of summary jurisdiction having jurisdiction in the place where the premises are situated in which the person in respect of whom the application is made resides, or by *a single justice having such jurisdiction* ; and the order may, if the court or justice thinks it necessary, be made *ex parte*."

I am inclined to the view that in London a stipendary magistrate must be sitting as a court of summary jurisdiction when hearing an application for an order for removal, but the suggestion has been made that an application could be heard in private at other times.

I would be glad to have your views on the matter. SAW.

Answer.

Every metropolitan stipendiary magistrate is a justice of the peace for several counties, and although he has the powers of two or more justices sitting as a court of summary jurisdiction, that does not prevent him from doing what can be done by a single justice. We therefore think he can act in the circumstances of the question when not sitting in court.

7.—New Streets Act, 1951—*Notice under s. 2—On whom to be served.*

My council have received an application for approval under their new streets byelaws to the laying out of a new road, and at the same time application for approval under their building byelaws to the construction of a number of houses to be built along the proposed road. The application in respect of the road was made by the person owning the site thereof and the site of the proposed houses, but the application regarding the latter was made by a building contractor, who, it is understood, has entered into a building agreement with the land owner. Will you please let me know if the building contractor is the only person on whom notices should be served under s. 2 (1) of the New Streets Act, 1951. PIQUE.

Answer.

The notice need only be served on the person by whom or on whose behalf the plans of the buildings were deposited under the building byelaws and the Public Health Act, 1936 ; *see* ss. 2 (1) and 10 (1) of the Act of 1951.

8.—Private Street Works Act, 1892—*Vendor of abutting land retains soil of street.*

The Private Street Works Act, 1892, has been applied by my council to a private street. It was found that the soil of the street was still vested in the building developer who has sold all building plots on either side of the road. Your opinion is desired as to

1. Whether the developer is liable for any charges incurred in the making up of the street ;

2. Whether the developer can, by reason only of his ownership of the soil of the street, be regarded as an owner of land adjoining, fronting, or abutting upon the street.

This developer himself made up a portion of the street, including a small central garden. The council adopted this part except this central reserve, the adopted part stopping just short of the reserve. The soil of this reserve is still in the ownership of the developer although he has retained no beneficial interest in it, and has in fact long since departed from the district.

3. Are you of opinion that that portion of the private street upon which the reserve abuts can be apportioned upon the developer ?

P.S.W.A.

Answer.

1. No.

2. No. The soil beneath the street does not front, adjoin, or abut. The status of the garden is not clear from the question ; it looks as if its surface has been dedicated as part of the street, and no one is liable to " repair " it.

3. Not if it is dedicated as part of the street ; it does not then front, adjoin, or abut, and the fact that it has not been adopted makes no difference.

9.—Public Health Act, 1936, s. 269—*Moveable dwellings—Meaning of " Household " in subs.* (5).

About twelve months ago a transport café with living accommodation was built in the district. The owner (a married woman) and her husband occupy the living accommodation. The owner's sister and her sister's husband went to the café, the owner of which bought a caravan for their accommodation and placed it on land she owned, and occupied at the rear of the café, forming part of the café site. As the caravan has been in occupation on the land for more than forty-two consecutive days without a licence the council have authorized proceedings to be taken for a contravention of s. 269 (2) of the Public Health Act, 1936. The owner contends that the persons living in the caravan are members of her household. Her sister, who lives in the caravan, helps in the café. The view the council take is that to be members of a household the persons concerned need not necessarily be related to the householder (defined in the *Oxford Dictionary* as " the person who holds or occupies a house as his own dwelling and that of his household ") but must live together in a house as a family group. Had the caravan users normally lived with the café owner in her house then they would undoubtedly have been part of her household and outside the provisions of s. 269. As it is, they have not, so far as is known, at any time lived with the café owner and consequently could not, the council consider, merely by moving into a caravan stationed at the back of the café owner's premises, become part of her household and so evade the provisions of the section. It will be apparent that if, in circumstances such as those described, the caravan users did in law form or become part of the household, no control would be exerciseable under the Public Health Act, 1936, over a caravan stationed in the backyard of any dwelling if it belonged to the house tenant and was occupied by some relative, whether previously living with him as part of his household or not. P. TOMO.

Answer.

The true test, in our opinion, is not the relationship of the parties before the stationing of the caravan, but its present use. If the house and the caravan are run as separate establishments, then the occupiers of the caravan are not members of the household. Merely sleeping in the caravan would not constitute it a separate establishment, nor would occupying it also as a sitting room or dining room. But if the occupants catered separately for themselves, or paid a rent, or had exclusive occupation of the caravan, and no general right to use the dwelling-house as a member of the household (whether as a member of the family or as a servant) then the occupants would not be members of the household.

10.—Public Health (Drainage of Trade Premises) Act, 1937—*Conditions.*

In " A Case on the Public Health (Drainage of Trade Premises) Act, 1937" published at 116 J.P.N. 587 your contributor R.P.C. said "It would be a difficult question whether, in cases where the discharge had been exceeded, a charge should be made for the excess or the whole." Whilst there is no recorded decision of the courts on this point, there is a ministerial decision. A trader in the area drained by the Colne Valley Sewage Board increased his discharge to the public sewers above the maximum quantity discharged in any one day in the year ending March 3, 1937. The Board gave their consent to the increased discharge and imposed new conditions on the whole discharge ; one of the conditions imposed was a charge for the whole of the effluent. The trader appealed to the Minister, whose decision was to the effect that if a trader increased his discharge above the maximum quantity discharged in any one day in the year ending March 3, 1937, the local authority could impose conditions on the whole of the effluent, but that the local authority was precluded by the provisions of s. 5 (2) from imposing a charge for the quantity which could have been discharged without the consent of the local authority, *i.e.*, the maximum quantity which the firm discharged in any one day in the year ending March 3, 1937. PERA.

Answer.

In our opinion, the decision of the Minister was clearly right where part of the trade effluent fell within s. 4 (1) of the Act of 1937. The only difficulty which might arise on the question of imposing a charge would be the ascertainment of the amount of the excess on which the charge could be levied ; a matter of evidence which is discussed in the article.

11.—Small Dwellings Acquisition Acts—*Liability of borrower for initial costs.*

There is no direction in the Act concerning the initial expenses which can be recovered from a borrower, and no uniform practice seems to be adopted as regards the expenses to be borne by local authorities out of the ¼ *per cent.* additional interest charge, which is intended to provide for the annual administration and management expenses. It seems to be a general rule for the borrower to bear the legal costs and stamp duty of his mortgage with the local authority. Some local authorities require a borrower to pay in addition : (*a*) a fee for a valuer's report on the market value of the property, and (*b*) the fees and stamp duty in respect of the local authority's mortgage with the Public Works Loan Board. Some local authorities charge (*a*) but not (*b*). I should be glad of your opinion, whether the expenses (*a*) and (*b*) above must be treated as part of the administration and management expenses ; if (*a*) is accepted as a legitimate charge, but not (*b*), on what grounds should (*b*) be treated as " administration and management ? " As the local authority is not obliged to make an advance, and I can find no legal authority for or against charges (*a*) and (*b*), is there any legal objection to a local authoritity's making it a condition of any advance that the borrower shall pay the expenses of (*a*) and (*b*) ?

PALD.

Answer.

We do not know of any legal objection to a condition requiring payment of what are legitimate charges to be made against a borrower from any other lender.

OFFICIAL AND CLASSIFIED ADVERTISEMENTS, ETC. (*contd.*)

COUNTY BOROUGH OF GRIMSBY

Second Assistant Solicitor

APPLICATIONS are invited for the above appointment vacant through promotions.

Salary, Grade V(a) is £625—£685 a year, rising after two years' experience from date of admission to £710—£785 a year. Applicants should be persons with either local government or good general practice experience. The duties of the post are mainly conveyancing and advocacy, but every opportunity will be given for the person appointed to obtain a wide knowledge of local government law and administration. The Corporation have several major schemes in hand, and the post offers considerable interest and experience.

Further particulars can be obtained from me. The closing date for applications is Saturday, March 28. There is no special form of application.

L. W. HEELER,
Town Clerk.

Municipal Offices,
Town Hall Square,
Grimsby.

COUNTY BOROUGH OF ROTHERHAM

Assistant Solicitor

A.P.T. VIII
(alternatively A.P.T. Va to VII)

APPLICATIONS are invited from experienced Solicitors for the appointment of Assistant Solicitor at a salary in accordance with Grade A.P.T. VIII (£760—£835) and on the National Conditions of Service.

Alternatively applications will be considered from less experienced Solicitors for appointment at a salary within Grades A.P.T. Va to A.P.T. VII (£625—£785) the commencing salary to be fixed according to experience and date of admission.

Applications, including names and addresses of three referees, should reach the undersigned not later than March 21, 1953.

Canvassing will disqualify.

JOHN S. WALL,
Town Clerk.

Municipal Offices,
Rotherham.

COUNTY OF BUCKINGHAM

Male Probation Officer

APPLICATIONS are invited for the appointment of a full-time Male Probation Officer for the Chesham, Amersham and Great Missenden area of Buckinghamshire.

The appointment and salary will be in accordance with the Probation Rules and subject to superannuation deduction. The successful candidate may be required to pass a medical examination ; if he can provide a car for official duties he will be paid a mileage allowance for its use according to the current County Council scale.

Applications, stating age, present position, qualifications and experience, together with the names of two referees, should reach the undersigned not later than March 31, 1953.

GUY R. CROUCH,
Clerk of the Peace for Bucks.

County Hall,
Aylesbury.

KESTEVEN (LINCS) MAGISTRATES' COURTS COMMITTEE

Appointment of Clerk to the Grantham Borough Justices

APPLICATIONS are invited from properly qualified persons for the part-time appointment of Clerk to the Grantham Borough Justices, which will become vacant on April 30, 1953. The personal salary has been fixed at £400 a year but will be reviewed when the results of the present national negotiations concerning Justices' Clerks' salaries are known. The appointment will be superannuable and subject to a medical examination. The Clerk will be required to provide his own office accommodation and clerical assistant for which initial allowances amounting to £400 a year will be paid. Full details of the appointment can be obtained from the undersigned, to whom applications, giving age and qualifications, and the names to two referees, should be sent so as to be received not later than March 18, 1953.

J. E. BLOW,
Clerk of the Committee.

County Offices,
Sleaford, Lincs.

DEVON MAGISTRATES' COURTS COMMITTEE

Justices' Clerk's Office at Torquay

APPLICATIONS are invited for the post of a Clerk experienced in the work and methods of a Justices' Clerk's Office.

The position carries a salary of £465 × £15—£510 per annum and is superannuable.

Requests for Application Forms and further particulars from the undersigned should be endorsed "Clerk—Justices' Clerk's Office, Torquay."

Applications, similarly endorsed, must reach the undersigned not later than March 21, 1953.

C. H. W. MESSER.

c/o The Clerk of the Peace,
The Castle,
Exeter.

GOVERNMENT OF THE GOLD COAST

VACANCIES exist in the Local Civil Service for one woman and two male Probation Officers in the Department of Social Welfare and Community Development, Gold Coast.

Candidates should have had three years' experience of probation work and either hold a University Certificate in Social Science or have undertaken an approved course of probation training in the United Kingdom. Candidates appointed will be responsible for all aspects of probation work, including supervision of adult and juvenile probationers, the submission of reports to Magistrates and Probation Committees, assistance in the after-care of persons committed to an institution and the handling of care and protection cases.

Appointment on temporary agreement for one tour of eighteen—twenty-four months with salary in scale £940—£1,180 and a gratuity on satisfactory completion of service. Accrued pension rights of local Act contributors may be preserved in "cold storage" under the Superannuation (Local Government, Commonwealth and Foreign Service) Interchange Rules, 1952. Quarters at low rentals. Free passages for officer, wife and three children under thirteen. Income tax at local rates lower than in United Kingdom.

Application forms and further particulars available from The Director of Recruitment (Colonial Service), Colonial Office, Great Smith Street, London, S.W.1. Women applicants should quote reference CDE/130/13/02, men reference CDE/130/13/01. Closing date for receipt of initial inquiries April 20, 1953.

COUNTY BOROUGH OF BURY

Appointment of Deputy Town Clerk

APPLICATIONS are invited from Solicitors with Local Government experience for the appointment of Deputy Town Clerk. Salary £1,000 × £35 (2) £30 (1)—£1,100 per annum.

The appointment is subject to the provisions of the Local Government Superannuation Act, 1937, and to medical examination.

Conditions of Appointment and Forms of Application may be obtained from me, and applications must reach me not later than March 16, 1953.

EDWARD S. SMITH,
Town Clerk.

Town Hall,
Bury.
February 24, 1953.

METROPOLITAN BOROUGH OF LAMBETH

Appointment of Town Clerk

APPLICATIONS are invited from persons with a wide and varied administrative experience for the appointment of Town Clerk. Qualification as a solicitor will be an advantage but is not essential. If so qualified, the officer appointed will act without additional remuneration as the council's solicitor in all legal and parliamentary matters.

Salary: £2,750 p.a. rising, by three increments, to £3,000 p.a. inclusive of all fees.

Particulars and conditions of appointment and form of application from the Town Clerk, Lambeth Town Hall, Brixton Hill, S.W.2. Closing date: March 27, 1953.

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APPLICATIONS are invited for the above whole-time appointment. Applicants must be not less than twenty-three nor more than forty years of age, except in the case of serving officers. The officer would be centred at Rochdale. The appointment will be subject to the Probation Rules, 1949 to 1952, and would be superannuable, the successful candidate being required to pass a medical examination.

Applications, stating age, qualifications and experience, together with not more than two recent testimonials, must reach the undersigned not later than March 18, 1953.

J. FREER,
Clerk to the Combined Committee.

The Butts,
Rochdale.

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